



Transcript Exhibit(s)

Docket #(s): G-01551A-02-0425

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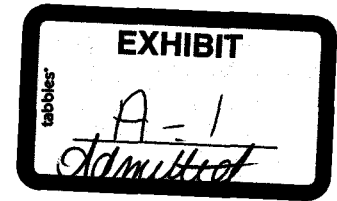
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Exhibit #: A1-6, AUIA1, B1, S1A,  
S2-5



**SOUTHWEST GAS CORPORATION**



June 6, 2002

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007-2996

Re: Application for Approval of Acquisition Plan  
and, if Appropriate, Waiver of Selected  
Provisions of the Affiliate Rules

Southwest Gas Corporation (Southwest) herewith submits for filing an original and ten copies of the above-referenced Application. Certain portions of the Appendix to the Application deemed to be confidential have been redacted. Unredacted copies are being provided to Arizona Corporation Commission Regulatory Operations Staff and the Residential Utility Consumer's Office.

Very truly yours,

Debra S. Jacobson  
Director/Government and State Regulatory Affairs

Enclosures



Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer  
June 6, 2002  
Page 2

4. Southwest and Xcel have executed a stock purchase agreement ("Stock Purchase Agreement") by the terms of which, *inter alia*, Southwest has agreed to purchase and Xcel has agreed to sell the Shares. The Appendix to this Application is a copy of the Stock Purchase Agreement.

*Components of the Acquisition Plan*

5. Southwest's acquisition of the Shares requires Commission permission pursuant to A.R.S. § 40-285.D, which provides as follows:

D. A public service corporation shall not purchase, acquire, take or hold any part of the capital stock of any other public service corporation organized or existing under the laws of this state without a permit from the commission.

6. Southwest's acquisition of the Shares may constitute the utilization of "utility funds to form a subsidiary" within the contemplation of A.A.C. R14-2-804.B.3 and, accordingly, either Commission prior approval or waiver may be required.

7. Southwest's acquisition of the Shares may constitute the organization of a Holding Company within the contemplation of A.A.C. R-14-3-803 and, for that reason, either Commission approval or waiver may be required.

8. Under the Acquisition Plan, Southwest intends to own the Shares for a limited period of time [i.e., no more than twelve (12) months subsequent to consummation of the Stock Purchase Agreement] prior to having all of the assets of Black Mountain transferred to Southwest and dissolving Black Mountain; accordingly, Commission approval is required to have the assets of Black Mountain transferred to Southwest by virtue of A.R.S. § 40-285.A and Commission approval or waiver may be required by virtue of A.A.C. R14-3-804.B.3 for the reason that the dissolution may constitute the divestiture of an "established subsidiary."



Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer  
June 6, 2002  
Page 4

### *Propane Facilities*

15. In addition to the facilities utilized by Black Mountain to provide propane service as a Public Service Corporation, Black Mountain owns and operates facilities to provide a propane service which is not subject to Commission jurisdiction. Specifically, the facilities are the trucks and appurtenant facilities utilized to deliver propane other than through pipeline facilities. It is Southwest's intention to dispose of all of the propane facilities, both the Commission-jurisdictional facilities as well as the non-utility facilities, as soon as practicable post-consummation and no later than twelve (12) months following consummation of the Stock Purchase Agreement. As contemplated by A.R.S. § 40-285.A, Southwest intends to seek, by separate application, Commission approval of any transfer of Commission-jurisdictional facilities.

### *Commission Approval of the Acquisition Plan*

16. Within the contemplation of A.R.S. § 40-285.D and § 40-285.A, respectively, the Commission is requested to permit Southwest to acquire the Shares and to authorize the subsequent [i.e., within twelve (12) months following consummation of the Stock Purchase Agreement] transfer of Black Mountain's assets to Southwest including, *inter alia*, the certificates of public convenience and necessity granted to Black Mountain by the Commission.

17. Within the contemplation of A.A.C. R14-2-804.B.3, to the extent required, the Commission is requested to approve Southwest's acquisition of the Shares and the subsequent [i.e., within twelve (12) months following consummation of the Stock Purchase Agreement] dissolution of Black Mountain.

18. Within the contemplation of A.A.C. R14-2-803, to the extent required, the Commission is requested to approve the organization of a Holding Company for the limited purpose set forth in the Acquisition Plan.





Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer  
June 6, 2002  
Page 6

**Xcel Energy**

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*Conclusion*

For all of the foregoing reasons, the Commission is urged to conclude that approval of the implementation of the Acquisition Plan, with or without the requested waiver, (1) would not impair the financial status of Southwest, (2) would not otherwise prevent Southwest from attracting capital at fair and reasonable terms and (3) would not impair the ability of Southwest to provide safe, reasonable and adequate service.

## TABLE OF CONTENTS

	Page
ARTICLE 1      DEFINITIONS.....	1
ARTICLE 2      Sale of Black Mountain .....	4
ARTICLE 3      Purchase Price .....	4
Section 3.1      Purchase Price.....	4
Section 3.2      Sales, Transfer, and Other Taxes .....	4
ARTICLE 4      Representations and Warranties of Xcel Energy .....	4
Section 4.1      Corporate Existence and Powers of Xcel Energy .....	4
Section 4.2      Authority .....	5
Section 4.3      Required Regulatory Approvals and Filings.....	5
Section 4.4      No Conflicts .....	5
Section 4.5      Financial Statements of Black Mountain.....	5
Section 4.6      Undisclosed Liabilities.....	5
Section 4.7      Title to Real and Personal Property .....	6
Section 4.8      Property Used.....	6
Section 4.9      Construction of Facilities.....	6
Section 4.10      Contracts and Commitments.....	6
Section 4.11      Employees of Black Mountain.....	6
Section 4.12      Employees and Employee Benefit Plans .....	6
Section 4.13      Worker's Compensation .....	8
Section 4.14      Labor Matters.....	8
Section 4.15      Legal Proceedings.....	8
Section 4.16      Permits, Licenses, Tariffs, Certificates, and Franchises .....	8
Section 4.17      Compliance With Laws.....	8
Section 4.18      Tax Matters .....	8
Section 4.19      Hazardous Substances.....	9
Section 4.20      Finders.....	9
Section 4.21      No Material Adverse Effect .....	9
Section 4.22      Disclosures .....	9
ARTICLE 5      Representations and Warranties of Buyer.....	9
Section 5.1      Existence and Powers of Buyer .....	9

# TABLE OF CONTENTS

(continued)

	Page
Section 5.2 Authority .....	9
Section 5.3 Governmental Approvals and Filings .....	10
Section 5.4 No Conflicts .....	10
Section 5.5 Finders .....	10
ARTICLE 6 Covenants of Xcel Energy .....	10
Section 6.1 Conduct of Business .....	10
Section 6.2 Insurance .....	10
Section 6.3 Investigation by Buyer .....	11
Section 6.4 Redemption of IDRBs .....	11
Section 6.5 Cooperation regarding Transitioning Employees .....	11
Section 6.6 Employee Benefit Plans and Employee Programs .....	12
Section 6.7 Real and Personal Property and Vehicle and Equipment Leases .....	12
Section 6.8 Citizens' Agreement .....	12
Section 6.9 Fulfillment of Conditions .....	12
Section 6.10 Notification to Buyer of Changes .....	12
ARTICLE 7 Covenants of Buyer; Fulfillment of Conditions .....	12
Section 7.1 Fulfillment of Conditions .....	12
Section 7.2 Propane Operation .....	12
Section 7.3 No Solicitation .....	13
ARTICLE 8 Other Agreements .....	13
Section 8.1 Regulatory Filings .....	13
Section 8.2 Financial and Business Records .....	13
Section 8.3 Employee Benefit Plans or Employee Programs .....	13
Section 8.4 Employment by Buyer .....	13
Section 8.5 Pay and Benefits For Transitioning Employees .....	14
Section 8.6 Health Benefits .....	14
Section 8.7 Tax Election .....	14
Section 8.8 Opportunity to Participate .....	14
ARTICLE 9 Conditions to Obligations of Buyer .....	14
Section 9.1 Representations, Warranties, and Covenants of Xcel Energy .....	14

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 9.2 Required Regulatory Approvals .....	15
Section 9.3 Third Party Consents.....	15
Section 9.4 Opinion of Counsel for Xcel Energy .....	15
Section 9.5 Litigation.....	15
Section 9.6 Certified Resolutions .....	15
Section 9.7 Officer's Certificate.....	15
ARTICLE 10 Conditions to Obligations of Xcel Energy .....	15
Section 10.1 Representations, Warranties, and Covenants of Buyer.....	15
Section 10.2 Required Regulatory Approvals .....	16
Section 10.3 Opinion of Counsel for Buyer.....	16
Section 10.4 Litigation.....	16
Section 10.5 Certified Resolutions .....	16
Section 10.6 Officer's Certificate.....	16
ARTICLE 11 Closing.....	16
Section 11.1 Time and Place.....	16
Section 11.2 Further Assurances.....	16
ARTICLE 12 Survival of Representations, Warranties, Covenants, and Indemnities .....	17
Section 12.1 Survival .....	17
Section 12.2 Limitations .....	17
Section 12.3 PIPECO.....	17
Section 12.4 Indemnification by Seller.....	17
Section 12.5 Indemnification by Buyer .....	17
Section 12.6 Environmental Response .....	18
Section 12.7 Indemnification Procedures .....	18
ARTICLE 13 Termination.....	19
Section 13.1 Termination.....	19
Section 13.2 Effect of Termination.....	19
ARTICLE 14 Expenses .....	19
ARTICLE 15 Notices .....	19
ARTICLE 16 Public Announcements and Releases.....	20

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
ARTICLE 17    Other Matters .....	20
Section 17.1    Governing Law .....	20
Section 17.2    Venue .....	21
Section 17.3    Counterparts .....	21
Section 17.4    Schedules .....	21
Section 17.5    Successors and Assigns.....	21
Section 17.6    Entire Agreement .....	21
Section 17.7    Construction and Interpretation .....	21

## STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT ("Agreement"), made as of the 24<sup>th</sup> day of May, 2002, is between XCEL ENERGY INC., a Minnesota corporation ("Xcel Energy" or "Seller"), and SOUTHWEST GAS CORPORATION, a California corporation ("Buyer").

**WHEREAS**, Black Mountain Gas Company, a Minnesota corporation ("Black Mountain"), owns and operates facilities to provide natural gas to consumers in Arizona and propane to consumers primarily in Arizona;

**WHEREAS**, Xcel Energy owns 100% of all the outstanding capital stock in Black Mountain (the "Shares"); and

**WHEREAS**, Xcel Energy desires to sell and Buyer desires to purchase all of the Shares.

**NOW, THEREFORE**, Xcel Energy and Buyer, in consideration of the mutual promises set forth in this Agreement, state, promise, and agree as follows:

### **ARTICLE 1** **DEFINITIONS**

As used in this Agreement, the following definitions shall apply:

"ACC" means the Arizona Corporation Commission.

"Agreement" means this Agreement by and between Seller and Buyer, as amended or supplemented, together with all Exhibits and Schedules incorporated by reference or referred to herein.

"Bond Sinking Fund" means the funds reserved on the balance sheet of Black Mountain as of the date of Closing for payments on the IDRBs which funds will be transferred to Xcel Energy prior to Closing.

"Closing" shall have the meaning as defined in Section 11.1 of this Agreement.

"Closing Date" means the date and time of Closing.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidentiality Agreement" means the Confidential Nondisclosure Agreement, dated September 10, 2001 among Seller, Black Mountain and Buyer.

"Determination of Taxability" means a determination by the Internal Revenue Service or by a court of competent jurisdiction in the United States that, as a result of the Buyer's purchase of Black Mountain's stock and subsequent operation of Black Mountain's existing gas facilities as an integral part of Buyer's existing gas operations in Arizona or the retirement, redemption or defeasance of the IDRBs, the interest payable on the IDRBs is includable for federal income tax purposes in the gross income of the owners thereof (other than an owner who is a "substantial

user" of the facilities financed thereby or a "related person" thereto within the meaning of Section 147(a) of the Internal Revenue Code).

"Employee Benefit Plans" means all employee benefit plans (as defined in Section 3(3) of ERISA, including, without limitation, any employee pension benefit plan as defined in Section 3(2) of ERISA, and any employee welfare benefit plan as defined in Section 3(1) of ERISA) maintained or contributed to by Xcel Energy or Black Mountain in which the Employees are eligible to participate.

"Employee Programs" means, other than Employee Benefit Plans, all of Xcel Energy's or Black Mountain's payroll practices, personnel policies, contracts, plans, and arrangements, if any, providing for bonuses, deferred compensation, retirement payments, profit sharing, incentive pay, commissions, vacation pay, or other benefits in which any Employees or their spouses and dependents participate, and all employment, severance, or other agreements with any director of Black Mountain or any Employee.

"Employees" means employees of Black Mountain immediately prior to the Closing.

"Encumbrance" means any mortgages, security interests, pledges, liens, charges, claims and encumbrances, including any leases, conditional sale, or other title retention agreements, easements, limitations, commitments, encroachments, restrictions, or encumbrances of any kind or nature whatsoever.

"Environmental Law" means the federal Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Safe Drinking Water Act, and the Toxic Substances Control Act, each as amended to the date hereof or any regulations thereunder, or any other applicable law relating to (a) the discharge, spill, disposal, emission, or other release of any Hazardous Substance; (b) any injury to or death of individuals or damage to or loss of property caused by or resulting from the presence of Hazardous Substances; or (c) the generation, storage, handling, location, disposal, or arranging for disposal of Hazardous Substances.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" means any corporation or trade or business (whether or not incorporated) under common control or treated as a single employer with Xcel Energy or Black Mountain within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Filings" means all reports, returns, registrations, statements, or applications together with any amendments required to be made with respect thereto, that were required to be filed with any Governmental Entity, including taxing authorities, except where the failure to file such reports, returns, registrations, applications, and statements has not had and is not reasonably expected to have a Material Adverse Effect on Black Mountain.

"Governmental Entity" means any court, administrative agency or commission, or other governmental authority or instrumentality, including, without limitation, IRS, SEC and ACC.

"Hazardous Substances" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any Applicable Laws as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "EP Toxicity"; (b) oil petroleum or petroleum derived substances and drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources; (c) any flammable substances or explosives, any radioactive materials, any hazardous wastes or substances, any toxic wastes or substances, or any other materials or pollutants which pose a hazard to any property of Black Mountain or to Persons on or about such property; and (d) asbestos, other than non-friable asbestos, and electrical equipment which contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"IDRBs" means Industrial Development Revenue Bonds issued by a Governmental Entity for the benefit of Black Mountain.

"IRS" means the Internal Revenue Service.

"Material Adverse Effect" are those that would have an adverse impact on the financial condition of Black Mountain exceeding Three Hundred Thousand Dollars (\$300,000).

"Permitted Encumbrances" means all Encumbrances that are:

(a) for Taxes or assessments, special or otherwise, either not due and payable or being contested in good faith and fully accrued or adequately provided for;

(b) representing mechanics', materialmen's, carriers', warehousemen's, landlords' and other similar or statutory liens arising in the ordinary course of business and fully accrued or adequately provided for; or

(c) rights of parties lawfully in possession and any other defect, exception to title, or easement or claim of easement which in all cases does not materially impair the use, operation, or value of the property to which it relates.

"Person" means any individual, corporation, company, partnership (limited or general), joint venture, association, limited liability company, trust, or other entity.

"Records" means all records and original documents which pertain to and are utilized by Xcel Energy or Black Mountain to administer, reflect, monitor, evidence, or record information respecting Black Mountain or the conduct of Black Mountain including all such records and documents maintained on electronic or magnetic media.

"Required Regulatory Approvals" means all approvals or consents of or Filings with any Governmental Entity required in order to consummate the transaction contemplated by this Agreement, all of which are listed on Schedules 4.3 and 5.3.

"SEC" means the United States Securities and Exchange Commission.



"Taxes" means all federal, provincial, territorial, state, municipal, local, foreign, or other taxes, imposts, rates, levies, assessments, and other charges including, without limitation, all income, franchise gains, capital, real property, goods and services, transfer, value added, gross receipts, windfall profits, severance, ad valorem, personal property, production, sales, use, license, stamp, documentary stamp, recording, excise, employment, payroll, social security, unemployment, disability, estimated or withholding taxes, and all customs and import duties, together with any interest, additions, fines, or penalties with respect thereto or in respect of any failure to comply with any requirement regarding Tax Returns and any interest in respect of such additions, fines, or penalties.

"Tax Returns" means any return, report, information statements, schedule, or other document (including any related or supporting information) with respect to Taxes, including any document required to be retained or provided to any Governmental Entity.

"Transitioning Employees" for the purposes of this Agreement is defined in paragraph Section 8.4 and described in Sections 8.4 through 8.6

## **ARTICLE 2**

### **SALE OF BLACK MOUNTAIN**

Subject to the terms and conditions of this Agreement, at Closing, Seller shall sell, transfer, and deliver the Shares of Black Mountain to Buyer, and Buyer shall purchase and accept from Seller, all such Shares.

## **ARTICLE 3**

### **PURCHASE PRICE**

Section 3.1 Purchase Price. The purchase price for all of the Shares shall be Eighteen Million Seven Hundred Thousand Dollars (\$18,700,000). In addition to the purchase price, Buyer will pay an amount equal to the principal amount of the IDRBS outstanding at closing, and the principal amount of IDRBS retired, redeemed, or defeased prior to or concurrent with closing, (net of the Bond Sinking Fund) and the principal amount of Seller's outstanding inter-company debt with Black Mountain at Closing; provided, however; that such amount shall not exceed Six Million Five Hundred Thousand Dollars (\$6,500,000) without the express written consent of Buyer. If said consent is given by Buyer at or prior to Closing, it shall be considered an amendment to this Section 3.1.

Section 3.2 Sales, Transfer, and Other Taxes. Any sales, transfer, purchase, use, real estate excise or similar Taxes which may be payable by reason of the sale, transfer, or conveyance of Black Mountain shall be borne by Buyer.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF XCEL ENERGY**

Xcel Energy represents and warrants to Buyer as follows:

Section 4.1 Corporate Existence and Powers of Xcel Energy. Seller is a corporation duly incorporated and validly existing under the laws of Minnesota. Black Mountain is a

corporation duly incorporated and validly existing under the laws of Minnesota and is duly qualified to do business in all other states in which its operations require it to be qualified. Seller has all requisite power and authority to own Black Mountain and Black Mountain has the requisite power and authority to conduct its business in Arizona as now conducted.

Section 4.2 Authority. Seller has all requisite corporate power and authority to execute and deliver this Agreement and to consummate the transaction contemplated by this Agreement. The execution and delivery of this Agreement by Seller has been duly and validly authorized and, subject to execution and delivery of this Agreement by Buyer and receipt of Seller's Required Regulatory Approvals and Buyer's Required Regulatory Approvals, collectively referred to as the "Required Regulatory Approvals", constitutes a valid and binding obligation of Seller enforceable in accordance with its terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally, or by general equitable principles.

Section 4.3 Required Regulatory Approvals and Filings. Except for the Required Regulatory Approvals listed on Schedules 4.3 and 5.3, no consent, approval, action, or filing with or notice to any Governmental Entity on the part of Xcel Energy or Black Mountain is required in connection with the execution, delivery, and performance of this Agreement or the consummation of the transaction contemplated hereby.

Section 4.4 No Conflicts. Assuming the redemption, retirement or defeasance of the IDRBs as required by Section 6.4 hereof, and subject to receipt of the Required Regulatory Approvals, the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not violate any law or regulation applicable to Xcel Energy or Black Mountain, or violate, conflict with, or result in breach of any provision of, or constitute a default under, or result in the termination of any provision of Xcel Energy's or Black Mountain's organizational documents, or any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation, or agreement of any kind to which Xcel Energy or Black Mountain is now a party which violation, conflict, breach or default would have a Material Adverse Effect; provided that the foregoing shall not apply to the loss of tax exempt status of the IDRBs or any violation of, conflict with, breach of or default or termination with respect to, any representations, warranties or covenants relating thereto, the sole remedy for which shall be the indemnity provided by Xcel Energy pursuant to Section 6.4.

Section 4.5 Financial Statements of Black Mountain. The financial statements and financial information provided to Buyer by Seller regarding Black Mountain, including the information set forth in Schedule 4.5, were prepared by Black Mountain, which Records are maintained by Xcel Energy and Black Mountain in accordance with generally accepted accounting principles consistently applied. The financial information set forth in Schedule 4.5 is a fair and complete representation of the assets and liabilities of Black Mountain as of December 31, 2001.

Section 4.6 Undisclosed Liabilities. Except as disclosed in Schedule 4.6, Seller and Black Mountain have no material liabilities, debts, or obligations, fixed, accrued, contingent, or otherwise, relating to Black Mountain other than (a) current liabilities incurred in the ordinary course of business; (b) accounts payable incurred in the ordinary course of business; (c)

obligations to be performed under existing contracts and permits; and (d) the IDRBS and inter-company debt identified in Section 3.1 of this Agreement.

Section 4.7 Title to Real and Personal Property. Except for Permitted Encumbrances and as set forth in Schedule 4.7, Seller and/or Black Mountain has good and marketable title to the assets of Black Mountain free and clear of all Encumbrances. Neither Seller nor Black Mountain has received notice of any pending or threatened condemnation proceeding against the real property identified in Schedule 4.7, and no such proceedings are pending or, to the knowledge of Seller after reasonable inquiry, threatened.

Section 4.8 Property Used. With the exception of the leased vehicles and equipment referenced in Section 6.7 of this Agreement and as otherwise specified in this Agreement, all of the property that is primarily dedicated to or used by Black Mountain is included in the assets as reflected in the financial statements set forth in Schedule 4.5. Except for rights arising under existing contracts as of December 31, 2001, the assets and leased vehicles and equipment constitute all of the property necessary for the conduct of Black Mountain's operations as currently conducted. All of the material items of tangible personal property included in the assets and the leased vehicles and equipment referenced in Section 6.7 are in good operating condition and repair, subject to normal wear and tear.

Section 4.9 Construction of Facilities. Except as set forth in Schedule 4.9, all of the facilities owned and operated by Black Mountain to provide natural gas and propane to consumers were at the time of installation, constructed and operated in compliance with all applicable provisions of safety-related rules promulgated by the United States Department of Transportation and the ACC and in conformity with all applicable industry construction and installation standards.

Section 4.10 Contracts and Commitments. As applicable to Black Mountain, and except as identified in Schedule 4.10, neither Xcel Energy nor Black Mountain is a party to or bound by any oral or written (a) express contract for personal services or employment that is not terminable by Xcel Energy or Black Mountain on 60 days or less notice without liability or expense, or (b) contract not made in the ordinary course of business. Further, except as specified in each contract identified in Schedule 4.10, Xcel Energy and Black Mountain has in all material respects performed or are performing all obligations required to be performed by each of them, and neither Xcel Energy nor Black Mountain nor any other party thereto of which Xcel Energy or Black Mountain had notice in writing, is in default in any material respect under any such contract.

Section 4.11 Employees of Black Mountain. Except for the individuals listed on Schedule 4.11, as of the date hereof there are no other employees of Black Mountain.

Section 4.12 Employees and Employee Benefit Plans.

(a) All reasonably anticipated obligations of Xcel Energy and Black Mountain applicable to the Employees, whether arising by operation of law, by contract, by past custom, or otherwise for Employee Programs with respect to the services rendered by any

of them through the date hereof have been paid or will be settled by Xcel Energy, without cost to Buyer.

(b) With respect to the Employees, Xcel Energy has listed on Schedule 4.12(b) all Employee Benefit Plans and Employee Programs providing benefits or compensation to the Employees, as in effect as of the date hereof.

(c) All accrued obligations of Xcel Energy and Black Mountain to Employees, whether arising by operation of law, by contract, by past custom or practice, or otherwise, for payments by Xcel Energy or Black Mountain to trusts or other funds or to any governmental agency, with respect to Employee Benefit Plans, Employee Programs, or any other benefits for such employees with respect to their employment, through the date hereof, have been paid or adequate accruals therefor have been made on the Records of Xcel Energy and Black Mountain.

(d) Except as disclosed in Schedule 4.12(b), neither Xcel Energy or Black Mountain, maintains or has any obligation to contribute to, or has in effect or has committed to adopt, any pension plan or any welfare plan in which any Employee participates. Further, none of the Employees participate in any "multi-employer pension plan" within the meaning of the Multi-employer Pension Plan Amendments Act of 1980, as amended.

(e) The Employee Benefit Plans and Employee Programs available to Employees conform in all material respects to all applicable laws, including the applicable provisions of ERISA and the Code. All notices, reports, returns, applications, and disclosures required by applicable law for such plans and programs have in all material respects been timely made to the IRS, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation, any participants, any trustee, and any insurer.

(f) Xcel Energy, Black Mountain, and their ERISA Affiliates have made all contributions required to have been made under all of the Employee Benefit Plans.

(g) No Employee Benefit Plans or any trusts created thereunder, nor to the knowledge of Seller, after reasonable inquiry, any trustee or administrator thereof, has engaged in a transaction which may subject any Employee Benefit Plans, any such trusts, or any party dealing with such Employee Benefit Plans or any such trust, to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code or to a civil penalty imposed by Section 502 of ERISA.

(h) There are no material actions, claims, or lawsuits which have been asserted or instituted against the Employee Benefit Plans with respect to any current or former employees of Black Mountain other than routine claims for benefits, and to the knowledge of Seller, after reasonable inquiry there are no facts which could form a reasonable basis for such action, claim, or lawsuit, and to the knowledge of Seller, after reasonable inquiry no such action, claim, or lawsuit has been threatened.

(i) Black Mountain has not agreed to indemnify any other party for any liabilities or expenses which have been or may in the future be incurred by or asserted against such other party with respect to any Employee Benefit Plans.

(j) Neither Xcel Energy, Black Mountain, nor any of their ERISA Affiliates has any unpaid liability in respect of any Employee for any contributions and/or premiums due under any Employee Benefit Plans or Employee Programs.

Section 4.13 Worker's Compensation. As applicable to Black Mountain, except as set forth in Schedule 4.13, Xcel Energy is not in default of any requirements under any applicable worker's compensation laws, and there are no pending or to the knowledge of Seller, after reasonable inquiry, threatened worker's compensation claims against Xcel Energy or Black Mountain or, to the knowledge of Seller, after reasonable inquiry, any set of facts that would give rise to such a claim.

Section 4.14 Labor Matters. There have not been any work stoppages, strikes, or other significant labor disputes at or pertaining to Black Mountain during the past three years and no such work stoppage, strike, or labor dispute is to the knowledge of Seller, after reasonable inquiry, threatened. Further, as to Employees, there are no pending or to the knowledge of Seller, after reasonable inquiry, threatened administrative claims regarding unfair labor practices, discrimination, or wages.

Section 4.15 Legal Proceedings. Except as described in Schedule 4.15, there are no claims, actions, suits, inquiries, investigations or proceedings pending or to the knowledge of Seller, after reasonable inquiry, threatened relating to Black Mountain before any Governmental Entity.

Section 4.16 Permits, Licenses, Tariffs, Certificates, and Franchises. Except for matters listed on Schedule 4.16, Xcel Energy and Black Mountain have all material permits, licenses, tariffs, certificates, franchises, and other governmental authorizations required to carry on Black Mountain's business as presently conducted, and, assuming ongoing proper action by the other party thereto or by the issuer thereof, all such permits, licenses, tariffs, certificates, franchises, and governmental authorizations are valid and in effect.

Section 4.17 Compliance With Laws. As applicable to Black Mountain, Xcel Energy and Black Mountain have been and are in material compliance with all laws, orders, rules, and regulations applicable to the ownership of Black Mountain and the conduct of its business, except (a) any past noncompliance that has been cured, and (b) any noncompliance that does not interfere with Black Mountain as an ongoing business.

Section 4.18 Tax Matters. Xcel Energy and Black Mountain have duly filed with the appropriate governmental authorities all Tax Returns and tax reports due and required to be filed by Xcel Energy and Black Mountain with respect to Black Mountain, including all federal, foreign, state, local profits, income, sales, use, occupation, license, franchise, excise, real and personal property, employment, social security, withholding, employment insurance and other Taxes and have paid or accrued for the payment of all such Taxes due as of the date hereof.

Section 4.19 Hazardous Substances. As applicable to Black Mountain, and except as described on Schedule 4.19, (a) Black Mountain is in compliance, in all material respects, with all terms and conditions of all material permits, licenses, and authorizations, as well as all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and time tables contained in or otherwise required by Environmental Laws; (b) there are no, and Xcel Energy and Black Mountain have received no notice of and has no knowledge of, past or present events, conditions, circumstances, activities, practices, incidents, or actions which may interfere with or prevent compliance or continued compliance with any Environmental Law, or otherwise give rise to any valid claim, action, demand, suit, proceeding, hearing, or investigation based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transfer, or handling, or the emission, discharge, release or threatened release into the environment of any Hazardous Substances by Xcel Energy and Black Mountain; and (c) there is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, demand letter, notice of violation, investigation, or proceeding pending or to the knowledge of Seller, after reasonable inquiry, threatened against Xcel Energy or Black Mountain relating in any way to any Environmental Laws.

Section 4.20 Finders. Seller has not employed any finder or broker in connection with the transaction contemplated by this Agreement, and it has taken no action which would give rise to a valid claim for a brokerage commission, finder's fee, or other like payment against Buyer.

Section 4.21 No Material Adverse Effect. Since December 31, 2001 there has not been (a) any material adverse change in the operating performance of Black Mountain or the occurrence of any event, condition, or circumstance of any character which had or is reasonably likely to have a Material Adverse Effect on Black Mountain's financial position, prospects, operations, or business; (b) any damage or destruction not fully covered by insurance (less applicable deductible provisions) materially and adversely affecting Black Mountain; (c) any labor dispute that has an adverse effect on Black Mountain; or (d) any sale, lease, transfer, exchange, or other disposition with respect to any of the assets, contracts, and permits, except in the ordinary course of business.

Section 4.22 Disclosures. No information furnished by or on behalf of Xcel Energy to Buyer in this Agreement or any document referred to in this Agreement or any exhibit attached to this Agreement, contains any untrue statement of material fact.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF BUYER.**

Buyer represents and warrants to Xcel Energy as follows:

Section 5.1 Existence and Powers of Buyer. Buyer is a California corporation in good standing and duly qualified to do business in the state of Arizona.

Section 5.2 Authority. Buyer has all requisite power and authority to execute and deliver this Agreement and to consummate the transaction contemplated by this Agreement. The execution and delivery of this Agreement by Buyer has been duly and validly authorized and, subject to execution and delivery of this Agreement by Xcel Energy and receipt of the Required

Regulatory Approvals, constitutes the valid and binding obligation of Buyer enforceable in accordance with its terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the rights of creditors generally, or by general equitable principles.

Section 5.3 Governmental Approvals and Filings. Except for the Seller's Required Regulatory Approvals listed on Schedule 4.3, and Buyer's Required Regulatory Approvals listed on Schedule 5.3 no consent, approval, or action of, filing with, or notice to any Governmental Entity on the part of Buyer is required in connection with the execution, delivery, and performance of this Agreement or the consummation of the transaction contemplated hereby, except where the failure to obtain any such consent, approval, or action, to make any such filing, or to give any such notice could not reasonably be expected to create a Material Adverse Effect as to Seller.

Section 5.4 No Conflicts. Subject to receipt of the Required Regulatory Approvals, the execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not violate any material law or regulation applicable to Buyer, or violate, conflict with, or result in breach of or constitute a default under, or result in the termination of any provision of Buyer's organizational documents, or any note, bond, mortgage, indenture, deed of trust, contract, lease or other instrument, obligation, or agreement of any kind to which Buyer is now a party or by which any of its stocks may be bound or affected.

Section 5.5 Finders. Buyer has not employed any finder or broker in connection with the transaction contemplated by this Agreement, and it has taken no action which would give rise to a valid claim for a brokerage commission, finder's fee, or other like payment against Xcel Energy.

## **ARTICLE 6**

### **COVENANTS OF XCEL ENERGY**

Section 6.1 Conduct of Business. Except as otherwise required by law or by any Governmental Entity, until Closing, Xcel Energy and Black Mountain shall own and operate Black Mountain in accordance with past practices and shall not engage in material transactions relating to Black Mountain out of the ordinary and usual course of business as previously conducted. Without limiting the generality of the foregoing, Xcel Energy and Black Mountain will use commercially reasonable efforts, to the extent the officers of Xcel Energy and Black Mountain believe such action to be in the best interest of the operation of Black Mountain, to (a) keep available (subject to dismissals, retirements and necessary replacements in the ordinary course of business) the services of Employees of Black Mountain; (b) maintain salaries, bonuses, and all other forms of compensation consistent with past practices; (c) maintain the assets in good working order and condition, ordinary wear and tear excepted; and (d) maintain the good will of key customers, suppliers, and other Persons with whom Black Mountain otherwise has significant business relationships in connection with the ownership and operation of Black Mountain.

Section 6.2 Insurance. Until Closing, Xcel Energy and/or Black Mountain shall continue to carry insurance currently in effect or in similar amounts related to the assets, insuring

the assets against loss or damage by fire and other risks, and public liability, consistent with and in accordance with past practices; provided, however, that Xcel Energy and/or Black Mountain will not be required to renew insurance on similar terms if such renewal would require the payment of insurance premiums in excess of 200% of the current premiums.

Section 6.3 Investigation by Buyer. Until Closing, Xcel Energy and Black Mountain will (a) allow Buyer and its authorized representatives full access, upon reasonable prior notice, during business hours, and consistent with the normal operation of Black Mountain, to the assets and to Xcel Energy and Black Mountain's books, files and Records relating to Black Mountain, and to such officers, Employees and agents of Xcel Energy and Black Mountain who have any responsibility for the operation of Black Mountain; and (b) furnish Buyer such financial and operating data and other information with respect to Black Mountain, as Buyer may reasonably request, except to the extent that furnishing such information would violate any law, order, or contractual obligation applicable to Xcel Energy or Black Mountain or by which any of its assets is bound; provided that any information furnished hereunder will be subject to the Confidentiality Agreement. To the extent any such Records are either (i) used in connection with any of Seller's businesses other than Black Mountain or (ii) are subject to a confidentially agreement or other restrictions limiting Seller's ability to disclose them, Seller may present photo copies or other reproductions from which, in the case of Records referred to in clause (i), information solely concerning any of Seller's businesses other than Black Mountain has been deleted or in the case of Records referred to in clause (ii) all confidential information has been redacted.

Section 6.4 Redemption of IDRBs. Seller shall take all steps necessary to preserve the tax-exempt status of the IDRBs by retiring, redeeming or defeasing the IDRBs prior to or concurrently with the Closing Date of this transaction. Any costs resulting from the retirement, redemption or defeasance of the IDRBs, including any liability upon the occurrence of a Determination of Taxability with respect to such bonds, shall be borne by Xcel Energy. Xcel Energy shall have no liability to Black Mountain or Buyer resulting from the loss of entitlement to deductions for interest expense in connection with the IDRBs for income tax purposes. Xcel Energy shall have no liability to Black Mountain or Buyer relating to or arising out of bonds other than the IDRBs, including industrial development revenue bonds of Buyer, which may result from the retirement, redemption or defeasance of the IDRBs.

Section 6.5 Cooperation regarding Transitioning Employees. Before Closing, Seller shall grant Buyer:

(a) Access to all Employees for purposes of interviewing; gathering employment information; ascertaining experience, training and job interest; and for extending offers of employment; and

(b) Information requested by Buyer regarding Employee policies, procedures, Employee Benefit Plans, Employee Programs, and nonconfidential personnel and benefit Records;

(c) Reasonable requests to communicate with Employees regarding terms and conditions of employment with Buyer; and



(d) The right to have access to nonconfidential files and records pertaining to Employees in a manner and at a location most convenient to enable Buyer to effectuate the transfer of Employees.

Section 6.6 Employee Benefit Plans and Employee Programs. Before Closing, Black Mountain and Xcel Energy shall perform such acts, execute such documents, and provide such notices as are reasonably necessary to effectuate the termination of Employees' participation in all Employee Benefit Plans and Employee Programs, with such termination to be effective immediately prior to Closing. Any related costs shall be borne by Xcel Energy.

Section 6.7 Real and Personal Property and Vehicle and Equipment Leases. Except as set forth on Schedule 6.7 hereto, prior to Closing, Seller shall transfer to Black Mountain (a) good and marketable title to all assets dedicated to or necessary for Black Mountain's operations, not currently owned by Black Mountain and (b) the title to all vehicles and equipment currently leased to Black Mountain by either Xcel Energy or any of Xcel Energy's affiliates or subsidiaries shall be transferred to Black Mountain free and clear of all Encumbrances.

Section 6.8 Citizens' Agreement. Seller agrees that Black Mountain will formalize Black Mountain's agreement with Citizens to continue to operate in the Greenthaven area of Citizens' certificated service area and submit such agreement to the ACC for its approval prior to Closing.

Section 6.9 Fulfillment of Conditions. Subject to the terms of this Agreement and fiduciary obligations under applicable law, Xcel Energy shall do all such acts and things as reasonably may be required to carry out Xcel Energy's obligations hereunder and to consummate and complete this Agreement.

Section 6.10 Notification to Buyer of Changes. Xcel Energy or Black Mountain will give Buyer prompt written notice of any event, condition, or fact that would cause any of its representations and warranties in this Agreement to be untrue in any material respect or any other event or condition of any kind known to Xcel Energy pertaining to and having a Material Adverse Effect on the financial position, prospects, or operations of Black Mountain.

## **ARTICLE 7**

### **COVENANTS OF BUYER; FULFILLMENT OF CONDITIONS**

Section 7.1 Fulfillment of Conditions. Subject to the terms of this Agreement and fiduciary obligations under applicable law, Buyer shall do all such acts and things as reasonably may be required to carry out Buyer's obligations hereunder and to consummate and complete this Agreement.

Section 7.2 Propane Operation. Buyer intends to pursue the sale of Black Mountain's regulated and unregulated propane operations, and will so inform the ACC in securing Required Regulatory Approvals. Buyer will not initiate or conclude any such sales activity prior to Closing. Furthermore, Buyer shall not provide or otherwise disclose to any third party prior to Closing any confidential information relating to such propane operations without the expressed written consent of Xcel Energy or Black Mountain.

Section 7.3 No Solicitation. Buyer covenants and agrees, except in accordance with the terms of this Agreement, that Buyer shall not until the later of (i) the Closing, or (ii) two years from the date hereof, directly or indirectly, solicit for employment or hire any employee of Black Mountain or Xcel Energy with whom the Buyer had contact or who became known to Buyer in connection with the consideration of the transactions related to this Agreement, provided, however, that the foregoing provision shall not prevent the Buyer from employing any such person who contacts the Buyer on his or her own initiative without any direct or indirect solicitation by or encouragement from the Buyer or who contacted the Buyer in response to a general advertisement.

## **ARTICLE 8**

### **OTHER AGREEMENTS**

Section 8.1 Regulatory Filings. Buyer and Seller shall cooperate and employ commercially reasonable efforts to promptly prepare and file all necessary documentation to obtain all necessary permits, consents, approvals, and authorizations from all Governmental Entities necessary or advisable in order to consummate the transactions contemplated by this Agreement. Each party shall have the right to review and approve in advance, with such approvals not to be unreasonably withheld, all Governmental Entity filings to be made by the other party in connection with the transactions contemplated by this Agreement.

Section 8.2 Financial and Business Records. Within 30 days of Closing, Seller shall provide to Buyer all Records that relate to Black Mountain, including customer lists and billing records, financial statements, subsidiary ledgers, tax records, personnel and payroll records of the Employees, manuals, system maps, rights-of-way, property titles, qualifications and training records, operation and maintenance records, engineering design plans, blue prints and as-built plans, specifications procedures and similar items relating specifically to Black Mountain. Further, Seller shall provide all information and affidavits sufficient to substantiate the Black Mountain current pipeline maximum allowable operating pressures including material records, pressure recording charts and pressure test records. To the extent any such Records are susceptible to duplication and are either (i) used in connection with any of Seller's businesses other than Black Mountain or (ii) are required by law to be retained by Seller, Seller may deliver photo copies or other reproductions from which, in the case of Records referred to in clause (i), information solely concerning any of Seller's businesses other than Black Mountain has been deleted.

Section 8.3 Employee Benefit Plans or Employee Programs. Nothing contained in this Agreement shall be construed as an assumption of or covenant to assume any of the obligations of Black Mountain or Xcel Energy for the Employee Benefit Plans and Employee Programs. Employees shall no longer continue accruing further rights, interests, or entitlements under such plans or programs after Closing.

Section 8.4 Employment by Buyer. Prior to Closing, Buyer shall extend conditional offers of employment with Southwest Gas Corporation or any of its subsidiaries to Employees, not otherwise identified on Schedule 8.4, subject to successful completion of pre-employment interviews, drug screenings and background investigations. If a conditional offer is accepted by such an Employee (with such Employees referred to for purposes of Article 8 as "Transitioning

Employees"), employment with Southwest Gas Corporation or any of its subsidiaries shall become effective immediately after Closing. Buyer shall use commercially reasonable efforts to place Transitioning Employees in positions having duties and functions most closely approximating duties and functions of the positions held by Employees on the date of Closing. Employment with Southwest Gas Corporation or any of its subsidiaries shall supercede employment with Black Mountain and/or Xcel Energy. Buyer will not illegally terminate or discriminate against any such Employee in its employment or hiring practices at or prior to Closing.

Section 8.5 Pay and Benefits For Transitioning Employees. Transitioning Employees placed into positions having scheduled wage rates will be paid no lower than entry level rate scheduled for that position and, for Transitioning Employees being placed into unscheduled positions, such employees shall receive compensation within the authorized range for the position into which they are placed. Transitioning Employees shall receive and participate in benefits and benefit plans available to all of Buyer's employees having like employment status in similar positions.

Section 8.6 Health Benefits. Notwithstanding any other provisions in this Article 8, all Employees (other than Employees listed on Schedule 8.4) (including Transitioning Employees) shall be provided by Buyer effective as of the Closing Date with coverage under health plans as currently provided by Buyer to its employees, without exclusion of or limitation as to any pre-existing conditions covered immediately prior to Closing under the health plans provided by Seller to the Employees.

Section 8.7 Tax Election. The parties agree to make, within 120 days following the Closing, a simultaneous joint Section 338(h)(10) election on IRS Form 8023 and on their Tax Returns regarding the sale of Black Mountain to Buyer.

Section 8.8 Opportunity to Participate. In the event of a Determination of Taxability, Buyer shall give Xcel Energy written notice and Xcel Energy may at its sole expense participate, either directly or in the name of Black Mountain. Buyer shall cause action to be taken, including the giving of powers of attorney, as shall be necessary to enable Xcel Energy to participate in proceedings in the name of Black Mountain.

## ARTICLE 9

### CONDITIONS TO OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

Section 9.1 Representations, Warranties, and Covenants of Xcel Energy. Except as otherwise would not be reasonably likely to have a Material Adverse Effect, each representation and warranty made in this Agreement by Xcel Energy shall be true in all material respects on and as of the Closing Date, unless waived in writing by Buyer, as though those representations and warranties were made on and as of the Closing Date (except for representations and warranties that expressly speak only as of a specific date or time which need only be true and correct as of

such date and time), and as of the Closing Date, Xcel Energy shall have complied in all material respects with all covenants made by it in this Agreement.

Section 9.2 Required Regulatory Approvals. Required Regulatory Approvals shall have been obtained and be in effect as of the Closing Date, all on terms which, in all material respects, (including without intending any limitation, the post-Closing rates and charges and the terms and conditions of service and cost recovery authorized by the ACC) are reasonably acceptable to Buyer, and Buyer shall have advised Xcel Energy to that effect. At a minimum, regulatory approvals shall be obtained from the ACC and SEC. Xcel Energy shall secure regulatory approval in every jurisdiction they operate in which approval of this transaction is required.

Section 9.3 Third Party Consents. Xcel Energy shall have obtained the written consent of third parties, including Governmental Entities, in form and substance reasonably satisfactory to Buyer and its counsel, necessary for consummation of the transaction contemplated by this Agreement, other than those which, if not obtained, would not, in the aggregate, have a Material Adverse Effect on the value of Black Mountain.

Section 9.4 Opinion of Counsel for Xcel Energy. Xcel Energy shall have delivered to Buyer an opinion of its General Counsel and special counsel for Xcel Energy, dated as of the Closing Date, substantially in the form of and to the effect set forth in Schedule 9.4 hereto.

Section 9.5 Litigation. As of the Closing Date, there shall not be in effect any order, decree, or injunction of a court of competent jurisdiction restraining, enjoining, or otherwise prohibiting the consummation of the transaction contemplated by this Agreement (each party agreeing to use its reasonable best efforts, including appeals to higher courts, to have any such order, decree, or injunction set aside or lifted), and no action shall have been taken, and no statute or regulation shall have been enacted, by any Governmental Entity in the United States which would prevent the consummation of such transaction.

Section 9.6 Certified Resolutions. Xcel Energy has delivered to Buyer copies of resolutions adopted by Xcel Energy's Board of Directors, certified as of the Closing Date by the Secretary or an Assistant Secretary of Xcel Energy, authorizing the execution and delivery of this Agreement and the performance by Xcel Energy of its obligations under this Agreement.

Section 9.7 Officer's Certificate. Xcel Energy has delivered to Buyer a certificate, dated as of the Closing Date and signed by one of its duly authorized officers, stating that the conditions set forth in Sections 9.1, 9.2, and 9.3 have been fulfilled.

## **ARTICLE 10**

### **CONDITIONS TO OBLIGATIONS OF XCEL ENERGY**

The obligations of Xcel Energy under this Agreement are subject to the satisfaction on or prior to the Closing Date, of the following conditions:

Section 10.1 Representations, Warranties, and Covenants of Buyer. Except as otherwise would not be reasonably likely to have a Material Adverse Effect, each representation and warranty made in this Agreement by Buyer, shall be true in all material respects on and as of

the Closing Date, unless waived in writing by Xcel Energy, as though those representations and warranties were made on and as of the Closing Date, and as of the Closing Date, Buyer shall have complied in all material respects with all covenants made by it in this Agreement.

Section 10.2 Required Regulatory Approvals. Required Regulatory Approvals shall have been obtained and be in effect as of the Closing Date, all on terms which, in all material respects are reasonably acceptable to Xcel Energy, and Xcel Energy shall have advised Buyer to that effect. At a minimum, regulatory approvals shall be obtained from the ACC and SEC.

Section 10.3 Opinion of Counsel for Buyer. Buyer shall have delivered to Xcel Energy an opinion of Robert M. Johnson, counsel for Buyer, dated as of the Closing Date, substantially in the form of and to the effect as set forth in Schedule 10.3 hereto.

Section 10.4 Litigation. As of the Closing Date, there shall not be in effect any order, decree, or injunction of a court of competent jurisdiction restraining, enjoining, or otherwise prohibiting the consummation of the transaction contemplated by this Agreement (each party agreeing to use its reasonable best efforts, including appeals to higher courts, to have any such order, decree, or injunction set aside or lifted), and no action shall have been taken, and no statute or regulation shall have been enacted, by any Governmental Entity in the United States which would prevent the consummation of such transaction.

Section 10.5 Certified Resolutions. Buyer has delivered to Xcel Energy copies of resolutions adopted by Buyer's Board of Directors, certified as of the Closing Date by the Secretary or an Assistant Secretary of Buyer, authorizing the execution and delivery of this Agreement and the performance by Buyer of its obligations under this Agreement.

Section 10.6 Officer's Certificate. Buyer has delivered to Xcel Energy a certificate, dated as of the Closing Date and signed by one of its duly authorized officers, stating that the conditions set forth in Sections 10.1 and 10.2 have been fulfilled.

## **ARTICLE 11**

### **CLOSING**

Section 11.1 Time and Place. The closing of the transaction contemplated by this Agreement (the "Closing") will take place at the offices of Southwest Gas Corporation, in Las Vegas, Nevada, at 12:00 noon, Pacific Time, on the fifth (5<sup>th</sup>) business day following the receipt of the last of the Required Regulatory Approvals or at such other place, at such other time, or at such later date, as Buyer and Xcel Energy agree in writing. Such date is herein called the "Closing Date." The transfer of the outstanding capital stock shall be effective as of 11:59:59 p.m. Pacific Time on the Closing Date.

Section 11.2 Further Assurances. From time to time after Closing, each party, upon the request of the other party, shall without further consideration, execute, deliver, and acknowledge all such further instruments of transfer and conveyance and do and perform all such other acts and things as either party may reasonably require to more effectively carry out the intent of this Agreement.

**ARTICLE 12**  
**SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS, AND**  
**INDEMNITIES**

Section 12.1 Survival. All representations, warranties, covenants, and provisions for indemnification contained in this Agreement, and all liability therefor, shall survive the Closing for a period of one (1) year except for the representations, warranties, covenants and provisions for indemnification provided in Sections 4.12, 4.18, 4.19, 6.4 and 9.1 (to the extent relating to the representations and warranties provided in Sections 4.12, 4.18 and 4.19) involving Taxes, environmental, ERISA, and IDRBs which shall survive the Closing for a period of five (5) years.

Section 12.2 Limitations. No claim may be asserted by either party, following Closing, for the breach of any representations, warranties, covenants, or agreements contained in this Agreement, unless and until the aggregate amount of either party's claims thereunder exceeds \$300,000 and shall not exceed a cumulative maximum of 50% of the Purchase Price.

Section 12.3 PIPECO. Notwithstanding any provision in this Agreement to the contrary, Seller shall indemnify Buyer for any tax obligation or other claims arising out of the PIPECO sales or transaction use tax dispute, but Seller will retain the right to defend, at its sole cost, such claim. Buyer shall promptly notify Seller of any communication from PIPECO or any other party regarding such claims. The indemnity obligation shall not be subject to any limitations otherwise set forth in this Agreement.

Section 12.4 Indemnification by Seller. Except as provided herein and subject to the limitations provided in Sections 12.1 and 12.2 hereof, Seller shall indemnify, defend, and hold harmless Buyer, including its former, present, and future officers, directors, employees, agents, shareholders, contractors, subcontractors, licensees, invitees, attorneys, and all heirs, representatives, successors, and assigns from and against any loss caused by or arising out of:

- (a) Any breach or default in the performance by Seller of any covenant or agreement of Seller contained in this Agreement;
- (b) Any breach of any warranty or representation made by Seller herein or in any schedule or exhibit hereto, or in any certificate or other instrument delivered by or on behalf of Seller pursuant hereto; or
- (c) Any liability arising out of any and all actions, suits, proceedings, claims, demands, judgments, costs, and expenses incident to any of the foregoing.

Section 12.5 Indemnification by Buyer. Except as provided herein and subject to the limitations provided in Sections 12.1 and 12.2 hereof, Buyer shall indemnify and hold harmless Seller, including its former, present, and future officers, directors, employees, agents, shareholders, contractors, subcontractors, licensees, invitees, attorneys, and all heirs, representatives, and its successors and assigns from and against any loss caused by or arising out of:

- (a) Any breach or default in the performance by Buyer of any covenant or agreement of Buyer contained in this Agreement;

(b) Any breach of warranty or representation made by Buyer herein or in any schedule or exhibit hereto, or in any certificate or other instrument delivered by or on behalf of Buyer pursuant hereto;

(c) Any liability arising out of Buyer's ownership of and Black Mountain's operations after Closing;

(d) Any liability resulting from illegal termination or discrimination against employees arising out of employment and hiring practices of Buyer, including actions communicated to employees by Buyer prior to Closing; or

(e) Any liability arising out of any and all actions, suits, proceedings, claims, demands, judgments, costs, and expenses incident to any of the foregoing.

Section 12.6 Environmental Response. In the event that Buyer shall be required by, or pursuant to any consent decree entered into with, any Governmental Entity having jurisdiction or the lawful order of a court of competent jurisdiction, to perform any removal, response, or remedial action covered by Seller's representations and warranties in Section 4.19 and subject to the limitations provided in Sections 12.1 and 12.2 hereof:

(a) Buyer shall immediately give written notice of such order or decree to Seller and Seller shall have a period of sixty (60) days within which to elect to perform such removal, response, or remedial action itself or to reimburse Buyer for the cost thereof; provided, however, if the order or decree requires a response by Buyer in less than sixty (60) days, then Seller shall make its election within such period as may allow Buyer to respond to the order or decree in timely fashion;

(b) If Seller elects to perform such removal, response, or remedial action itself, it shall have the exclusive right to negotiate all elements of the work with the Governmental Entity, and shall have such easements and rights of access to Black Mountain as may be necessary to complete the work; provided, however, that (i) Seller and Buyer will consult in good faith to assure that the work, to the extent practicable, will not unduly interfere with Buyer's operations and will be appropriate to the uses of the property involved; (ii) Seller shall indemnify and hold harmless Buyer and its successors and assigns from and against any loss where such loss arises in connection with or incident to the entry upon, occupation of, or activities with respect to Black Mountain by Seller, its agents, or contractors; (iii) in addition, Seller covenants and agrees to pay in full for all materials affixed and to pay in full all Persons who perform labor upon such property, and not to permit or suffer any mechanics' or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of Seller; and (iv) Seller agrees to indemnify and hold harmless Buyer against and from any and all liens, claims, demands, costs, and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 12.7 Indemnification Procedures. Whenever a Person is or may be entitled to receive indemnity under any provision of this Agreement, such Person (the "Indemnitee") shall

promptly notify the party who is or may be obligated to provide indemnity (the "Indemnitor") in writing of any matter which relates or may relate to a claim for indemnity arising under this Agreement. The Indemnitor may contest and defend in good faith any claim of third parties covered by this Section, provided such contest is made without cost or prejudice to the Indemnatee, and provided that within ten (10) days of the Indemnitor's receipt of notice of such claim, the Indemnitor notifies the Indemnatee of its desire to defend and contest such claim. The Indemnatee shall reasonably cooperate with the Indemnitor in its investigation and response to any third party claim. If the Indemnitor does not notify the Indemnatee of its desire to contest the claim, the Indemnitor shall reimburse the Indemnatee on demand for any payment actually made by the Indemnatee at any time after the Closing Date with respect to any claim, demand, obligation, liability, loss, cost, damage, or expense to which the obligation of indemnity relates.

### **ARTICLE 13**

#### **TERMINATION**

Section 13.1 Termination. This Agreement may be terminated and abandoned at any time on or prior to the Closing Date if:

- (a) The parties agree in writing to terminate this Agreement; or
- (b) The Closing Date shall not have occurred prior to April 30, 2003, if (and only if) the party seeking termination is not in breach or default in any material respect of any of its representations, warranties, covenants, or agreements contained in this Agreement.

Section 13.2 Effect of Termination. Upon termination pursuant to this Article 13, this Agreement will become void and of no further force and effect, except that, in the event either party commits a breach of this Agreement or otherwise fails to use reasonable best efforts to fulfill its obligations, the other party shall be entitled to the remedy of specific performance in addition to any and all other available legal or equitable remedies (including but not limited to damages).

### **ARTICLE 14**

#### **EXPENSES**

Whether or not the transaction contemplated hereby is consummated, each of the parties hereto will pay, except as otherwise provided herein, its own expenses, income and other Taxes, and costs (including, but not limited to, the fees, disbursements, and expenses of its attorneys, accountants, and consultants) incurred by it in negotiating, preparing, closing, and carrying out this Agreement and the transaction contemplated by this Agreement.

### **ARTICLE 15**

#### **NOTICES**

All notices or other communications regarding this Agreement which either party may be required or desire to give to the other party shall be in writing, and shall be deemed to have been duly given when given by personal service, facsimile, e-mail, registered or certified mail, or



overnight courier to the Person and at the addresses specified below, or to such other Person at such other address as may be substituted by notice given as provided herein.

If to Xcel Energy:     Xcel Energy Inc.  
800 Nicollet Mall, 30<sup>th</sup> Floor  
Minneapolis, Minnesota 55402  
Attention:     Paras Shah  
Director, Business Development,  
Acquisitions and  
Divestitures

with a copy to:     Xcel Energy Inc.  
800 Nicollet Mall, 30<sup>th</sup> Floor  
Minneapolis, Minnesota 55402  
Attention:     General Counsel

If to Buyer:     Southwest Gas Corporation  
5241 Spring Mountain Road  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510  
Attention:     Edward A. Janov  
Vice President/Chief Accounting Officer

with a copy to:     Southwest Gas Corporation  
5241 Spring Mountain Road  
P.O. Box 98510  
Las Vegas, Nevada 89193-8510  
Attention:     Robert M. Johnson  
Assistant General Counsel

Either party may change the address to which notices are to be addressed by giving the other party notice in the manner herein set forth.

## **ARTICLE 16**

### **PUBLIC ANNOUNCEMENTS AND RELEASES**

Except as otherwise required by law, neither party to this Agreement will make nor cause to be made any public announcement or release concerning this Agreement or the transaction contemplated hereby without the prior written consent of the other party to this Agreement.

## **ARTICLE 17**

### **OTHER MATTERS**

Section 17.1 Governing Law. The validity, interpretation, and performance of this Agreement will be determined in accordance with the laws of the state of Arizona applicable to contracts made and to be performed wholly within that state, except to the extent that a dispute arises which is subject to the jurisdiction of the ACC in which case the dispute will be submitted to and presided over by the ACC.

Section 17.2 Venue. Any action arising out of or related to this Agreement shall be brought in the Superior Court in Maricopa County, Arizona except to the extent that the enforcement of any provision of this Agreement regarding regulated utility operations which shall be filed and decided by the ACC.

Section 17.3 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 17.4 Schedules. The glossary, schedules, and exhibits attached hereto and the other documents to be delivered pursuant hereto are hereby made a part of this Agreement as if set forth in full herein.

Section 17.5 Successors and Assigns. This Agreement will be binding upon Xcel Energy and Buyer and their respective successors and assigns, except that no right, benefit, or obligation hereunder may be assigned by either party without the prior written consent of the other party.

Section 17.6 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to its subject matter and supersedes all negotiations, prior discussions, agreements, arrangements, and understandings, written or oral, relating to the subject matter of this Agreement.

Section 17.7 Construction and Interpretation. The table of contents and the headings of the Articles, Sections, and subsections are for convenience only and shall not affect the meaning of this Agreement. Unless the context of this Agreement or the Schedules hereto clearly requires otherwise, (a) the words "includes" and "including" are used without limitation, and (b) the word "or" will have the inclusive meaning represented by the phrase "and/or." No presumption will apply in favor of any party to this Agreement in the interpretation of this Agreement or the resolution of any ambiguity in any provision hereof.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

SELLER:

BUYER:

XCEL ENERGY INC.

SOUTHWEST GAS CORPORATION

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Michael O. Maffie

President/Chief Executive Officer

**DISCLOSURE SCHEDULE**

**BLACK MOUNTAIN GAS ("BLACK MOUNTAIN")**

**DATED AS OF MAY 24, 2002**

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DISCLOSURE SCHEDULE

Schedule 4.3

Seller's Required Regulatory Approvals and Filings

- 1.) Order by the Securities and Exchange Commission pursuant to the Public Utility Holding Company Act of 1935 approving the sale of Black Mountain.
- 2.) Order by the Arizona Corporation Commission approving the sale/acquisition of Black Mountain.

**CONFIDENTIAL****DISCLOSURE SCHEDULE****Schedule 4.5****Financial Statements of Black Mountain**

**BMG**  
**Unaudited Balance Sheet**  
**For the Twelve Months Ending December 31, 2001**

**ASSETS****UTILITY PLANT**

GAS PLANT	24,097,195
ACCUM. DEPR. UTILITY	6,208,610

**NET PLANT IN SERVICE** 17,888,585

**WORK IN PROGRESS** 79,136

**TOTAL PLANT IN SERVICE** 17,967,721

**OTHER PROP & INVESTMENTS**

NON UTILITY PLANT	1,060,870
ACCUM. DEPR. OTHER PROP	533,739

**NET NON UTILITY PLANT** 527,131

BOND SINKING FUND 568,047

UNAMORTIZED DEBT COST 42,246

DEFERRED GAS COST 991,618

**TOTAL OTHER PROPERTY** 2,129,042

**CURRENT ASSETS**

CASH	605,122
ACCOUNTS RECEIVABLE (NET)	1,837,329
INVENTORIES	756,177
OTHER CURRENT ASSETS	159,926

**TOTAL CURRENT ASSETS** 3,358,554

**TOTAL ASSETS** 23,455,317

## DISCLOSURE SCHEDULE

## Schedule 4.5 (continued)

Financial Statements of Black Mountain

## BMG

## Unaudited Balance Sheet

For the Twelve Months Ending December 31, 2001

**OWNERS' EQUITY**

COMMON STOCK	3,634,193
TREASURY STOCK	(1,746)
RETAINED EARNINGS	7,637,449
CURRENT YEAR INCOME	1,038,181

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<b>TOTAL OWNERS' EQUITY</b>	<b>12,308,077</b>
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LONG-TERM BONDS	3,000,000
LONG-TERM INTERCOMPANY NOTE	3,097,021
DEFERRED TAX & OTHER LIABILITIES	1,497,037

## CURRENT LIABILITIES

ACCOUNTS PAYABLE	296,996
ACCRUED EXPENSES	754,790
CURRENT PORT OF LT INTERCO NOTE	210,946
ACCRUED VACATION	79,978
CUSTOMER DEPOSITS	215,661
INCOME TAXES	935,113
OTHER TAXES	380,568
MISC. CURRENT LIABILITIES	679,128

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<b>TOTAL CURRENT LIABILITIES</b>	<b>3,553,180</b>
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<b>TOTAL LIABILITIES</b>	<b>11,147,238</b>
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<b>TOTAL LIABILITIES &amp; OWNERS' EQUITY</b>	<b>23,455,315</b>
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**DISCLOSURE SCHEDULE**

**Schedule 4.6**

**Undisclosed Liabilities**

None



DISCLOSURE SCHEDULE

Schedule 4.7

Title to Real and Personal Property

1. 18,000 gallon Propane tank in Greenthaven used to provide propane to Greenthaven. Black Mountain Gas has no written agreement or lease for the use of this propane storage tank.
2. 2000 E. Frontage Road, Page, Arizona: A Deed of Trust to secure indebtedness in the amount shown below, and any other obligations secured thereby.

Amount: \$1,100,000.00  
Dated: May 8, 1985  
Trustor: Black Mountain Gas Company, an Arizona Corporation  
Trustee: FIRST INTERSTATE BANK OF ARIZONA, NA.  
Beneficiary: FIRST INTERSTATE BANK OF ARIZONA, NA.  
Recorded: November 20, 1985, in Docket 1061, Page 812

Xcel Energy shall cause the foregoing deed of trust to be removed of record as of or prior to Closing.

DISCLOSURE SCHEDULE

Schedule 4.9

Construction of Facilities

1. Although Black Mountain believes that its underground piping has been installed in compliance with applicable standards, some such piping was installed without tracer wire. Black Mountain has other appropriate means to locate such piping.

**DISCLOSURE SCHEDULE**

**Schedule 4.10**

**Contracts and Commitments**

1. Accounting Outsourcing Solutions by Emerald Business Solutions for Black Mountain Gas. Although the agreement with Emerald Business Solutions expired on February 1, 2002, Black Mountain Gas continues to receive services under the same terms of the agreement. The original agreement requires 120 days notice to cancel.

## DISCLOSURE SCHEDULE

## Schedule 4.11

Employees of Black Mountain

Shane Berke	Jimmy Newman
Gale Browning	Danny Ray
David Brunson	Cynthia Rodriquez
Tamara Bruske	Frank Rogers II
John Caughlin	Robert Rosenberger
Laurie Cleland	Vincente Santiago
Christine Eddy	Randy Shields
Timothy Edwards	Alberto Vidal
Floyd Elmore	Cynthia Warren
Robert Fink	Robert Willoughby
Nelda Fox	Saul Carrasco
Sara Hause	Noni Chettle
Amy Hudson	Carol Desensi
Donald Larson	John Reiber
Michael Laubhan	Gail Robinson
Eddie Morgan	Matthew Welty

**DISCLOSURE SCHEDULE**

**Schedule 4.12b**

**Employees and Employee Benefit Plans**

1. Pension Traditional Benefit Plan and Pension Equity Plan, PEP
2. Retirement Savings Plan
3. Deferred Compensation Plan
4. Employee Stock Ownership Plan
5. Excess Benefit Plan
6. Paid Time Off
7. Paid Time Off Buy/Sell
8. Short Term Disability
9. Long Term Disability
10. Medical Benefits / Prescription Drug Plan
11. Dental Benefits
12. Employee Basic and Supplemental Life Insurance
13. Employee Accidental Death and Dismemberment Insurance
14. Spouse and Child Life Insurance
15. Health Care Reimbursement Account
16. Dependent Care Reimbursement Account
17. Vision Benefits
18. Spouse and Child Accidental Death and Dismemberment
19. Transportation Reimbursement Account
20. Optional Long Term Disability
21. Tuition Reimbursement
22. Stock Options

DISCLOSURE SCHEDULE

Schedule 4.12b (continued)

Employees and Employee Benefit Plans

23. Pretax Flex Benefit Plan

24. Adoption Assistance

25. Sick Child Care

26. Stock Purchase Plan

27. Child Care Discounts

28. BMG shirts (6 per year), pants (6 per year, up to \$150), boots (up to \$75 per year), gloves (as needed), BMG jackets (1 every other year)

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**DISCLOSURE SCHEDULE**

**Schedule 4.13**

**Worker's Compensation**

Current open worker's compensation claims:

- 1.) Randy Shields, 11/25/01, injury
- 2.) Floyd Elmore, 4/21/2002, dog bite in Page

**DISCLOSURE SCHEDULE**

**Schedule 4.15**

**Legal Proceedings**

- 1.) State Farm Fire & Casualty Company vs. Black Mountain Gas Company, Cause No. CV2002-133. This proceeding is related to a fire at a mobile home on March 25, 2000, the Cowan residence. The fire is believed to have started at a water heater.
- 2.) PIPECO Tax Issue



DISCLOSURE SCHEDULE

Schedule 4.16

Permits, Licenses, Tariffs, Certificates and Franchises

- 1.) Greenthaven

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**DISCLOSURE SCHEDULE**

**Schedule 4.19**

**Hazardous Substances**

None

DISCLOSURE SCHEDULE

Schedule 6.7

Real and Personal Property and Vehicle and Equipment Leases

- 1.) 18,000 gallon Propane tank in Greenthaven used to provide propane to Greenthaven. Black Mountain Gas has no written agreement or lease for the use of this propane storage tank.
- 2.) John Reiber's laptop computer and associated software, monitor & docking station
- 3.) 2 leased copy machines and associated equipment, copy management agreement dated 9/27/01.
- 4.) Leased duplexing attachment and connectivity equipment, Lease Number 882184.
- 5.) One Radio Detection Locating machine.
- 6.) The following programs are licensed to BMG by Xcel Energy and will not be available to BMG after closing.

Black Mountain Gas has 14 standard desk licenses which covers:

Microsoft Windows Operating System

Microsoft Office Professional

Microsoft Client Access software- SQL, SMS, Exchange

Norton AntiVirus

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**DISCLOSURE SCHEDULE**

**Schedule 8.4**

**Employment by Buyer**

- 1.) John Reiber

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**DISCLOSURE SCHEDULE**

**Schedule 9.4**

**Opinion of Counsel for Xcel Energy**

- 1.) Form of opinion of General Counsel for Xcel Energy
- 2.) Form of opinion of special counsel for Xcel Energy

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**Form of opinion of General Counsel for Xcel Energy**

[letterhead]

[date]

Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89150

Ladies and Gentlemen:

I am the Vice President of Law and General Counsel of Xcel Energy Inc., (the "Company") a Minnesota corporation, and have provided legal counsel to the Company in connection with the transactions contemplated by the Stock Purchase Agreement dated as of \_\_\_\_\_, 2002 (the "Agreement") by and between the Company and Southwest Gas Corporation. This opinion letter is provided to you at the request of the Company pursuant to Section 9.4 of the Agreement. Capitalized terms used and not otherwise defined in this opinion letter have the meanings assigned to such terms in the Agreement.

The law covered by the opinions expressed herein is limited to the federal laws of the United States of America and the laws of the state of Minnesota. I am member of the bar of the state of Minnesota and not a member of the bar in the state of Arizona. For purposes of this opinion, with respect to all matters of Arizona law (other than regulatory matters before the Arizona Corporation Commission), I have assumed that Arizona law is identical to Minnesota law. For purposes of the opinions in paragraphs 2,5,7 and 8 with respect to Arizona regulatory approvals, I have relied on the opinion of counsel retained by Xcel Energy in Arizona, Fennemore Craig, P.C.

In connection with this opinion letter, I have examined originals, or copies, certified or otherwise identified to my satisfaction, of such documents, records, certificates and statements of government officials, officers and other representatives of the persons referred to therein, and such other documents as I have deemed relevant or necessary as the basis for the opinions herein expressed, including the following:

- (a) The Agreement;
- (b) The Articles of Incorporation of the Company certified by the Secretary of State of the state of Minnesota as of [7 days before closing], and certified to me by an officer of the Company as being complete and in full force and effect as of the date of this opinion letter;
- (c) The Articles of Incorporation of Black Mountain Gas Company ("Black Mountain") certified by the Secretary of State of the state of Minnesota as of [7 days before closing], and certified to me by an officer of Black Mountain or the Company as being complete and in full force and effect as of the date of this opinion letter;
- (d) The Bylaws of the Company certified to me by an officer of the Company as being complete and in full force and effect as of the date of this opinion letter;
- (e) The Bylaws of Black Mountain certified to me by an officer of the Company as being complete and in full force and effect as of the date of this opinion letter;
- (f) Records certified to me by an officer of the Company as constituting all records of proceedings and actions of the Board of Directors of the Company relating to the transactions contemplated by the Agreement;
- (g) A Certificate of Good Standing relating to Seller issued by Secretary of State of Minnesota, dated as of [7 days before closing]; and
- (h) A Certificate of Good Standing relating to Black Mountain issued by the \_\_\_\_\_ of the state of Arizona and the Secretary of State of the state of Minnesota, dated as of [7 days before closing];

As to certain matters of fact material to the opinions expressed herein, I have relied upon the representations and warranties as to factual matters contained in and made pursuant to the Agreement and upon the certificates and statements of public officials and of officers of the Company. I have also examined originals or copies of such corporate documents or records of the Company, as I have considered appropriate for the opinions expressed herein.

Where I render an opinion concerning an item "known to me" or my opinion otherwise refers to my knowledge, the opinion is based solely upon (a) the conscious awareness of facts or other information known to me and (b) such other investigation, if any, that I specifically set forth herein. No inference as to my knowledge of any matters should be drawn from the fact of my representation of the Company.

Based upon and subject to the foregoing and to the qualifications and exclusions stated below, I am of the opinion that:

1. The Company is a legally existing corporation under the laws of the state of Minnesota .
2. Black Mountain is a legally existing corporation under the laws of the state of Minnesota and is duly qualified to do business in the state of Arizona.
3. The Company has all requisite corporate power and authority to enter into and perform its obligations under the Agreement.
4. The Company has authorized, by all necessary corporate action, the execution and delivery of, and performance of its obligations under the Agreement, and the Company has executed and delivered the Agreement.



5. The Agreement constitutes the legal, valid and binding agreements of the Company, enforceable against the Company in accordance with its terms (except as the foregoing may be limited by (a) general principles of equity; and (b) bankruptcy, insolvency, reorganization, arrangement, moratorium and other similar laws affecting the rights and remedies of creditors generally).

6. The execution and delivery by the Company of, and the performance of its obligations under the Agreement by the Company will not (a) violate the Company's Articles of Incorporation or Bylaws, (b) breach or result in a material default under the provisions of any material agreement known to me to which the Company is a party or by which it is bound, or (c) breach or otherwise violate any existing obligation of the Company under (i) any governmental statute, rule or regulation applicable to the Company or (ii) any order, writ, judgment, injunction, decree, determination or award entered against the Company and known to me, the violation or contravention of which would materially and adversely affect the transactions contemplated by the Agreement.

7. The execution and delivery by the Company of, and the performance of its obligations under the Agreement by the Company will not (a) violate Black Mountains' Articles of Incorporation or Bylaws, (b) breach or result in a material default under the provisions of any material agreement known to me to which Black Mountain is a party or by which it is bound, or (c) breach or otherwise violate any existing obligation of Black Mountain under (i) any governmental statute, rule or regulation applicable to Black Mountain or (ii) any order, writ, judgment, injunction, decree, determination or award entered against Black Mountain and known to me, the violation or contravention of which would materially and adversely affect the transactions contemplated by the Agreement.

8. All Required Regulatory Approvals to be obtained by the Company in order to permit the consummation of the Agreement have been obtained and are in full force and effect.

In giving this opinion, I further advise you that notwithstanding any provisions in the Agreement to the effect that the Agreement reflects the entire understanding of the parties with respect to the matters described therein, the Arizona Superior Court of Maricopa County may consider extrinsic evidence of the circumstances surrounding the negotiation and execution of the Agreement to ascertain the intent of the parties in using the language employed in the Agreement, regardless of whether the language used is plain and unambiguous on its face, and may determine that additional or supplemental terms can be incorporated into the Agreement.

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This opinion letter is delivered as of its date and without any undertaking to advise you of any changes of law or fact that occur after the date of this opinion letter even though such changes may affect the legal analysis, a legal conclusion or an information confirmation in this opinion letter. This opinion has been rendered to you in connection with the transaction described herein, and is intended solely for your benefit and is not to be copied, quoted, made available or be relied upon by any other person, firm or entity without my prior written consent.

Very truly yours,

Gary R. Johnson

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**Form of opinion of special counsel for Xcel Energy**

Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89150

Re: Stock Purchase Agreement dated as of \_\_\_\_\_, 2002

Ladies and Gentlemen:

We have acted as special counsel to Xcel Energy Inc., a Minnesota corporation (the "Company"), in connection with the transactions (the "Transactions") contemplated by the Stock Purchase Agreement between the Company and Southwest Gas Corporation ("you" or "Buyer"), dated as of \_\_\_\_\_, 2002 (the "Agreement"). You have requested our opinion with respect to the matters set forth herein pursuant to Section 9.4 of the Agreement. Unless otherwise defined herein or unless the context otherwise requires, all capitalized terms used herein shall have the meanings assigned to them in the Agreement.

For purposes of this opinion, we have examined such questions of law and fact as we have deemed necessary or appropriate and have examined originals, certified copies or copies otherwise identified as true copies of the following:

- (a) The Agreement;
- (b) The Articles of Incorporation of Black Mountain Gas Company ("Black Mountain") certified by the Secretary of State of the State of Minnesota as of \_\_\_\_\_, 2002 [7 days before closing], and certified to us by an officer of Black Mountain as being complete and in full force and effect as of the date hereof;
- (c) The Bylaws of Black Mountain certified to us by an officer of Black Mountain as being complete and in full force and effect as of the date hereof;
- (d) The Articles of Incorporation of the Company certified by the Secretary of State of the State of Minnesota as of \_\_\_\_\_, 2002 [7 days before closing], and certified to us by an officer of the Company as being complete and in full force and effect as of the date hereof;

(e) The Bylaws of the Company certified to us by an officer of the Company as being complete and in full force and effect as of the date hereof;

(f) [Unanimous written consent resolutions] of the Board of Directors of the Company dated \_\_\_\_\_, 2002, certified to us by an officer of the Company as being complete and in full force and effect as of the date hereof;

(g) The agreements of Black Mountain listed on Exhibit A hereto (the "Material Agreements"); and

(h) The Opinion and Order of the Arizona Corporation Commission, Decision No. \_\_\_\_\_, docketed \_\_\_\_\_, 2002 (the "Order").

In addition, we have examined such other records, agreements, documents and other instruments of the Company and Black Mountain and such certificates or comparable documents of public officials and of officers and representatives of the Company and Black Mountain as we deemed necessary or appropriate for purposes of rendering the opinions set forth below. As to the various questions of fact material to our opinions, we have relied upon the representations and warranties of the Company contained in the Agreement and in various officer's certificates, and other representations, warranties and statements made by representatives of the Company and Black Mountain, all of which representations, warranties and statements we have assumed to be true and correct in all respects as of the date hereof.

We have further assumed: (i) the genuineness and authenticity of all documents examined by us and all signatures thereon not witnessed by us and the conformity to originals of all copies of all documents examined by us; (ii) that the execution, delivery and acceptance of the Agreement and all documents, contracts, agreements, certificates and other materials (collectively, the "Agreements") in connection with the transactions contemplated by the Agreement have been duly authorized by all action, corporate or otherwise, necessary by the parties to those Agreements (collectively, the "Parties"); (iii) the legal capacity of all natural persons executing the Agreements; (iv) that the Parties other than the Company and Black Mountain (collectively, the "Other Parties") have obtained all necessary consents, authorizations, approvals, permits or certificates (governmental and otherwise) which are required as a condition to the execution and delivery of the Agreements by the Other Parties and to the consummation by the Other Parties of the transactions contemplated thereby (including such, if any, as are

required by the Securities and Exchange Commission ("SEC")); (v) the due execution and delivery of the Agreements by the Parties; (vi) that the Agreements constitute legal, valid and binding obligations of the Other Parties under the laws of all applicable jurisdictions; (vii) that the Agreements accurately describe and contain the mutual understanding of the Parties, and that there are no oral or written statements or agreements that modify, amend or vary, or purport to modify, amend or vary, any of the terms thereof; (viii) that the Other Parties will act in a commercially reasonable manner and in accordance with all legal requirements in enforcing their rights under the Agreements; (ix) that the laws of the State of Arizona chosen by the parties to govern the Agreement will govern the Agreement and that the result of the application of Arizona law will not be contrary to a fundamental policy of the law of any other state with which the parties may have contact in connection with the transactions contemplated thereby; and (x) that the Company, Black Mountain and Buyer, as the case may be, will perform their covenants in the Agreement within the applicable time periods set forth in the Agreement, and will satisfy the conditions set forth in the Order within the applicable time periods set forth in the Order.

We are qualified to practice law in the State of Arizona. We express no opinion as to, and for the purposes of the opinions set forth herein, we have conducted no investigation of, and do not purport to be experts on, any laws other than the laws of the State of Arizona. With respect to such laws, our opinions are as to what the law is or, in circumstances where the status of the law is unclear, what the law might reasonably be expected to be as of the date hereof. This opinion is rendered as of the date hereof, and we undertake no obligation to update this opinion should this opinion no longer remain accurate by change in factual circumstances, law, judicial decision or otherwise.

Based on the foregoing, and subject to the assumptions, limitations, qualifications and exceptions set forth herein, we are of the opinion that:

1. The execution and delivery by the Company of, and the performance by the Company of its obligations under, the Agreement will not: (a) violate Black Mountain's Articles of Incorporation or Bylaws; (b) breach or result in a material default under the provisions of any Material Agreement, which breach or default would have a Material Adverse Effect; or (c) to our knowledge, breach or otherwise violate any existing obligation of Black Mountain or Seller (as it relates to Black Mountain) under (i) any Arizona state or local governmental statute, rule or regulation applicable to Black Mountain or (ii) any order, writ, judgment, injunction, decree, determination or award entered against Black Mountain, in either case the breach or violation of which would materially and adversely affect the Transactions.

2. All Arizona state and local Required Regulatory Approvals to be obtained by the Company in order to permit the consummation of the Transactions have been obtained and, to our knowledge, are in full force and effect.

3. The Agreement constitutes the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforceability may be limited by:

(a) bankruptcy, insolvency, reorganization, arrangement, moratorium, fraudulent transfer or conveyance, or other similar laws now or hereafter in effect relating to the rights and remedies of creditors;

(b) the effect of general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law), the discretion of the court before which proceedings may be brought, and an implied covenant of good faith and fair dealing; and

(c) certain waivers, procedures, remedies, indemnities and other provisions of the Agreement may be unenforceable under or limited by Arizona law; however, such law does not, in our opinion, substantially prevent the practical realization of the benefits intended by the Agreement if the Other Parties act in good faith and in a commercially reasonable manner in accordance with the requirements of applicable law.

We are expressing no opinion as to any matter other than those expressly set forth in the numbered paragraphs above. Further, without limiting the generality of the preceding sentence and notwithstanding numbered paragraph 2 above, we are expressing no opinion as to: (i) the applicability or effect of any federal laws, (ii) the enforceability of any indemnity or waiver provision with respect to any claims or other matters relating to or arising under federal or state securities laws, as they may be held to violate public policy; or (iii) the applicability or effect of any federal or state securities laws. In addition, our opinion as to enforceability of the Agreement is limited to enforceability between the original parties thereto.

The phrase "to our knowledge" or similar phrases means the actual knowledge which Timothy Berg, Theresa Dwyer and W. T. Eggleston, Jr., who are the only attorneys in this firm who have had significant involvement in our representation of the Company during the course of the Transactions, have obtained solely in connection with the representation of the Company in

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connection with the Transactions. Except as expressly set forth herein, we have not undertaken any independent investigation to determine the existence or absence of facts, and no such inference as to our knowledge of the existence or absence of such facts should be drawn from such representation.

This opinion is being furnished only to you and is solely for your benefit. Except with our prior written consent, this opinion may not be relied upon by, filed with or furnished to, quoted in any manner to, or delivered to, any person or entity or referred to in any financial statement, report or related document.

Very truly yours,

Fennemore Craig, A Professional Corporation

**EXHIBIT A**

**MATERIAL AGREEMENTS**



**DISCLOSURE SCHEDULE**

**SOUTHWEST GAS CORPORATION ("SOUTHWEST")**

**DATED AS OF MAY 24, 2002**

## **DISCLOSURE SCHEDULE**

### **Schedule 5.3**

#### **Buyer's Required Regulatory Approvals and Filings**

- 1.) Order by the Arizona Corporation Commission approving the sale/acquisition of Black Mountain and the formation of a public utility holding company/affiliate interests.
- 2.) Order by the Securities and Exchange Commission pursuant to the Public Utility Holding Company Act of 1935 (the "35 Act") approving the sale of Black Mountain and exempting Southwest from the coverage of the 35 Act.

**DISCLOSURE SCHEDULE**

**Schedule 10.3**

**Opinion of Counsel for Southwest**

- 1.) Opinion of Assistant General Counsel for Southwest

Letterhead]

\_\_\_\_\_, 2002

Xcel Energy Inc.  
800 Nicollet Mall, Suite 300  
Minneapolis, Minnesota 55402

Ladies and Gentlemen:

I have acted as counsel to Southwest Gas Corporation (the "Company"), a California corporation, in connection with the transactions contemplated by the Stock Purchase Agreement dated as of \_\_\_\_\_, 2002 (the "Agreement"), by and between Xcel Energy Inc. and the Company. This opinion letter is provided to you at the request of the Company pursuant to Section 10.3 of the Agreement. Capitalized terms used and not otherwise defined in this opinion letter have the meanings assigned to such terms in the Agreement.

The law covered by the opinions expressed herein is limited to the laws of the state of Arizona, the corporate and public utility laws of the state of California and the federal laws of the United States of America.

In connection with this opinion letter, I have examined originals, or copies certified or otherwise identified to my satisfaction, of such documents, records, certificates and statements of government officials, officers and other representatives of the persons referred to therein, and such other documents as I have deemed relevant or necessary as the basis for the opinions herein expressed, including the following:

- (a) The Agreement;
- (b) The Articles of Incorporation of the Company certified by the Secretary of State of the state of California as of [ 7 days before closing ], and certified to me by an officer of the Company as complete and in full force and effect as of the date of this opinion letter;
- (c) The Bylaws of the Company certified to me by an officer of the Company as complete and in full force and effect as of the date of this opinion letter;
- (d) Records certified to me by an officer of the Company as constituting all records of proceedings and actions of the Board of Directors of the Company relating to the transactions contemplated by the Agreement; and
- (e) A Certificate of Good Standing relating to the Company issued by the Arizona Corporation Commission of the state of Arizona and the Secretary of State of the

state of California, dated as of [ 7 days before closing ], respectively.

As to certain matters of fact material to the opinions expressed herein, I have relied upon the representations and warranties as to factual matters contained in and made pursuant to the Agreement and upon the certificates and statements of public officials and of officers of the Company. I have also examined originals or copies of such corporate documents or records of the Company as I have considered appropriate for the opinions expressed herein.

Where I render an opinion concerning an item "known to me" or my opinion otherwise refers to my knowledge, the opinion is based solely upon (a) the conscious awareness of facts or other information known to me and (b) such other investigation, if any, that I specifically set forth herein. No inference as to my knowledge of any matters should be drawn from the fact of my representation of the Company.

Based upon and subject to the foregoing and to the qualifications and exclusions stated below, I am of the opinion that:

1. The Company is a corporation duly organized and validly existing under the laws of the State of California and is duly qualified to do business in the state of Arizona.
2. The Company has all requisite corporate power and authority to enter into and perform its obligations under the Agreement.
3. The Company has authorized, by all necessary corporate action, the execution and delivery of, and performance of its obligations under the Agreement, and the Company has executed and delivered the Agreement.
4. The Agreement constitutes the legal, valid and binding agreements of the Company, enforceable against the Company in accordance with its terms (except as the foregoing may be limited by (a) general principles of equity and (b) bankruptcy, insolvency, reorganization, arrangement, moratorium and other similar laws affecting the rights and remedies of creditors generally).
5. The execution and delivery by the Company of, and the performance of its obligations under the Agreement by the Company will not (a) violate the Company's Articles of Incorporation or Bylaws, (b) breach or result in a material default under the provisions of any material agreement known to me to which the Company is a party or by which it is bound, or (c) breach or otherwise violate any existing obligation of the Company under (i) any governmental statute, rule or regulation applicable to the Company or (ii) any order, writ, judgment, injunction, decree, determination or award entered against the Company and known to me, the violation or contravention of which would materially and adversely affect the

transactions contemplated by the Agreement.

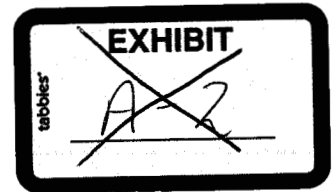
6. All Required Regulatory Approvals to be obtained by the Company in order to permit the consummation of the Agreement have been obtained and are in full force and effect.

In giving this opinion, I further advise you that notwithstanding any provisions in the Agreement to the effect that the Agreement reflects the entire understanding of the parties with respect to the matters described therein, the Arizona Superior Court of Maricopa County may consider extrinsic evidence of the circumstances surrounding the negotiation and execution of the Agreement to ascertain the intent of the parties in using the language employed in the Agreement, regardless of whether the language used is plain and unambiguous on its face, and may determine that additional or supplemental terms can be incorporated into the Agreement.

This opinion letter is delivered as of its date and without any undertaking to advise you of any changes of law or fact that occur after the date of this opinion letter even though such changes may affect the legal analysis, a legal conclusion or an information confirmation in this opinion letter. This opinion has been rendered to you in connection with the transaction described herein, and is intended solely for your benefit and is not to be copied, quoted, made available or be relied upon by any other person, firm or entity without my prior written consent.

Very truly yours,

Robert M. Johnson  
Attorney-at-law



SOUTHWEST GAS CORPORATION  
DOCKET NO. G-01551A-02-0425

**PREPARED REBUTTAL TESTIMONY**

**OF**

**EDWARD A. JANOV**

**BENNETT D. BURKE**

**EDWARD B. GIESEKING**

**ON BEHALF OF  
SOUTHWEST GAS CORPORATION**

February 5, 2003

**EXHIBIT**

*A-2A*  
*Admitted*

BEFORE THE ARIZONA CORPORATION COMMISSION

Prepared Rebuttal Testimony  
of  
EDWARD A. JANOV

Q. 1 Please state your name and business address.

A. 1 My name is Edward A. Janov. I am the Vice President/  
Finance and Treasurer for Southwest Gas Corporation  
(Southwest or the Company). My business address is  
5241 Spring Mountain Road, Las Vegas, Nevada 89150-0002.

Q. 2 Please state your educational background and business  
experience.

A. 2 I graduated from King's College in Wilkes-Barre,  
Pennsylvania in 1976 with a Bachelor of Science Degree in  
Accounting. I became a Certified Public Accountant in  
1980 and am a member of the American Institute of  
Certified Public Accountants and the District of Columbia  
Institute of Certified Public Accountants.

From 1976 through 1986, I was employed by the  
Federal Energy Regulatory Commission (FERC) in  
Washington, D.C. and San Francisco, California. I worked  
in the Office of the Chief Accountant and became an audit  
manager in 1980. My responsibilities included the audits  
of gas, oil, and electric utilities for compliance with  
generally accepted accounting principles (GAAP) and FERC  
requirements.



1 In April 1986, I was hired by Southwest and worked  
2 in the Rate Department. In April 1987, I became the  
3 Assistant Controller. I was promoted to Controller in  
4 1994, to Vice President/Controller and Chief Accounting  
5 Officer in 1996, and to my current position in 2002. My  
6 current areas of responsibility include treasury  
7 services, corporate planning, and corporate purchasing.

8 Q. 3 Have you previously provided testimony before regulatory  
9 agencies?

10 A. 3 Yes. I have previously testified on behalf of the Company  
11 before the Arizona Corporation Commission (Commission),  
12 the Public Utilities Commission of Nevada, and the  
13 California Public Utilities Commission.

14 Q. 4 What is the purpose of your prepared rebuttal testimony?

15 A. 4 The purpose of my rebuttal testimony is to support the  
16 Company's application for approval of the acquisition of  
17 Black Mountain Gas Company (Black Mountain).  
18 Specifically, I am providing the Company's response to  
19 the public interest concerns implicit within the fourteen  
20 conditions Commission Utilities Division Staff (Staff)  
21 seek to impose upon the acquisition of the Black Mountain  
22 operations. Along with the other Southwest witnesses, I  
23 will provide the Commission with the relevant information  
24 to demonstrate the fitness of Southwest as an acquiring  
25 entity; the benefits Black Mountain customers will derive  
26 from the acquisition by Southwest; why acquisition of  
27 Black Mountain by Southwest is in the public interest,

1 even absent the imposition of these proposed conditions;  
2 and why imposition of some of these conditions may  
3 jeopardize the acquisition or are contrary to the best  
4 interests of Black Mountain and Southwest customers.

5 In particular, my testimony demonstrates that the  
6 transaction would not impair the financial status of  
7 Southwest; otherwise prevent it from attracting capital  
8 at fair and reasonable terms; or impair the ability of  
9 Southwest to provide safe, reasonable, and adequate  
10 services (see R14-2-804 of Arizona Administrative Code).  
11 Other Southwest witnesses will respond to specific Staff  
12 conditions and recommendations.

13 Q. 5 Please summarize the application.

14 A. 5 Southwest applied for approval of the acquisition of the  
15 common stock of Black Mountain; the subsequent transfer  
16 of assets of Black Mountain to Southwest, including the  
17 Certificates of Convenience and Necessity (CC&N) granted  
18 to Black Mountain; and the eventual dissolution of Black  
19 Mountain. Black Mountain provides natural gas and propane  
20 service within the state of Arizona as a public service  
21 corporation. Xcel Energy Inc. (Xcel), a Minnesota  
22 corporation, owns one hundred percent (100%) of the  
23 outstanding shares of Black Mountain. Southwest and Xcel  
24 have executed a stock purchase agreement, by which  
25 Southwest has agreed to purchase and Xcel has agreed to  
26 sell those shares. Southwest intends to own the shares  
27 for a limited period of time (estimated at approximately

1 twelve months) prior to transferring all of the assets of  
2 Black Mountain to Southwest.

3 It is Southwest's intention to dispose of all of  
4 the propane facilities in the Page, Arizona area,  
5 including both the Commission-jurisdictional facilities,  
6 as well as the non-utility facilities, as soon as  
7 practical.

8 Q. 6 Please briefly describe Black Mountain.

9 A. 6 Black Mountain is a natural gas and propane utility with  
10 a natural gas division located in Cave Creek, Arizona and  
11 a propane division located in Page, Arizona. The Cave  
12 Creek division serves approximately 7,900 natural gas  
13 customers in a rapidly growing service territory located  
14 just north of Phoenix. This service territory is nearly  
15 surrounded by the existing Southwest service area. Black  
16 Mountain serves approximately 2,400 propane customers.

17 Q. 7 Why is Southwest interested in acquiring Black Mountain?

18 A. 7 Southwest is primarily interested in acquiring the Cave  
19 Creek natural gas utility business of Black Mountain. To  
20 acquire these assets, at Xcel's insistence, Southwest  
21 must first purchase Black Mountain in its entirety.  
22 Because of its size, this transaction is not an  
23 "acquisition" in the traditional sense of a major merger  
24 or utility acquisition. Such legal distinctions aside,  
25 this transaction is best viewed as a strategic  
26 acquisition of an existing customer base with related  
27 infrastructure in a service territory, essentially,

1 already served by Southwest.

2 By analogy, this transaction is similar to  
3 Southwest extending service to a new subdivision or  
4 development. Still, operating efficiencies will be  
5 realized as the Cave Creek natural gas operations are  
6 merged into the Southwest Central Arizona Division.

7 Q. 8 How does this acquisition compare to the scale of  
8 Southwest's current operations?

9 A. 8 While the significance of adding nearly 8,000 customers  
10 and related facilities is not to be underestimated,  
11 Southwest currently adds approximately 60,000 customers  
12 per year to its nearly 1.5 million customer base (at  
13 December 31, 2002). This includes approximately 30,000  
14 new customers per year in Arizona, where Southwest serves  
15 over 800,000 customers in a rapidly growing and expanding  
16 service territory. The addition of 7,900 new customers  
17 via this transaction is akin to what Southwest currently  
18 adds to its Arizona customer base every 90 days, and to  
19 its Companywide customer base every month and a half.

20 Q. 9 What operating efficiencies will be realized as the Cave  
21 Creek natural gas operations are merged into Southwest?

22 A. 9 Southwest believes a number of operating efficiencies  
23 will result from this acquisition. Although the  
24 transaction is relatively small, the benefits are readily  
25 apparent.

26 Southwest views this transaction as a "win-win" for  
27 all parties, including customers and the Commission. In

1 that respect, it is somewhat puzzling why the Staff is  
2 proposing to attach fourteen conditions to the  
3 acquisition approval. No other party to this proceeding  
4 has proposed any significant conditions for approval of  
5 the acquisition and several of the Staff's proposals  
6 could actually diminish or negate the expected benefits  
7 or even impose greater costs than are currently borne by  
8 customers.

9 Aside from the benefit of dealing with one  
10 integrated utility, Southwest can bring higher levels of  
11 customer service, operation, and pipeline safety to the  
12 Black Mountain service territory. This is not meant to  
13 disparage Black Mountain or Xcel. It is simply meant to  
14 support the fact that Southwest provides a more  
15 sophisticated level of service than Black Mountain.  
16 Furthermore, the Commission will be able to conserve  
17 resources and maximize consistency by dealing with only  
18 one regulated entity rather than two. This, in my  
19 opinion, creates a "win-win" for the Commission and the  
20 Black Mountain customers and demonstrates why the  
21 acquisition is in the public interest.

22 Q. 10 Are operating efficiencies, cost savings, rate  
23 reductions, or the like required as a condition to a  
24 utility acquisition?

25 A. 10 Although they may be preferred, there is no such  
26 regulatory requirement to my knowledge. In fact, my  
27 understanding is that the Commission must simply find

1 that an acquisition is in the public interest.

2 Q. 11 How does Southwest intend to proceed if the acquisition  
3 is approved?

4 A. 11 With respect to the Cave Creek natural gas system, a  
5 transition period will be required to assimilate all of  
6 the Black Mountain customer records, financial records,  
7 and operating data into Southwest recordkeeping systems.

8 During this transition, conversion issues are  
9 likely to be encountered due to what appears to be, at  
10 least by Southwest standards, limited or inconsistent  
11 records. Southwest anticipates there will be some  
12 incremental costs associated with this data conversion  
13 and upgrade. Customer billing information and systems  
14 mapping are two examples where differences in  
15 recordkeeping by Black Mountain deviate from Southwest's  
16 standards and systems. Not unlike buying a resale home,  
17 Southwest expects to discover other similar issues after  
18 the acquisition.

19 Q. 12 Does Southwest have to consummate this acquisition if it  
20 concluded that the conditions imposed on it by the  
21 Commission were too onerous?

22 A. 12 No. Southwest has preserved the right in the Stock  
23 Purchase Agreement to terminate this transaction if the  
24 terms and conditions of service and cost recovery  
25 authorized by the Commission are not reasonably  
26 acceptable, as determined by Southwest. As stated  
27 previously, Southwest initially viewed this transaction

1 as a "win-win", which would receive rapid regulatory  
2 approval. Southwest would have to re-evaluate the  
3 economics of proceeding further, and the concessions that  
4 would be required, if the Commission were to adopt the  
5 Staff's proposed conditions and recommendations before  
6 consummating a transaction for the addition of  
7 approximately 7,900 new natural gas customers.

8 Q. 13 What is Southwest proposing?

9 A. 13 Southwest is proposing that the existing Black Mountain  
10 general margin rates remain in effect until the next  
11 Southwest general rate case. At that time, the transition  
12 should be complete and the majority of operational and  
13 system improvement issues will be known or resolved. The  
14 fair value of Southwest assets devoted to public service  
15 can be determined by the Commission, and the general  
16 rates of both companies can be combined at that time, if  
17 that is the Commission preference.

18 Q. 14 Are there any parties, other than Staff, who have  
19 objected to this plan?

20 A. 14 No, not that I am aware of at this writing. In fact, the  
21 Residential Utility Consumer Office (RUCO) has endorsed  
22 Southwest acquiring the Black Mountain system without  
23 suggesting additional conditions or burdens. The Arizona  
24 Utility Investors Association (AUIA) also supports the  
25 acquisition as proposed by Southwest.

26 Q. 15 How does Southwest anticipate funding the proposed  
27 acquisition?

1 A. 15 Because of the relatively small size of the transaction,  
2 Southwest will finance the acquisition by accessing its  
3 currently available \$250 million working capital  
4 facility.

5 Q. 16 Will this transaction in any way impede the ability of  
6 Southwest to attract capital for other continuing  
7 business needs at fair and reasonable terms?

8 A. 16 No.

9 Q. 17 What does Southwest intend regarding the discrete  
10 regulated and non-regulated propane businesses of Black  
11 Mountain?

12 A. 17 Because Southwest is not in the propane business, and  
13 does not want to be, the Company intends to sell the  
14 propane assets of Black Mountain as soon as feasibly  
15 possible.

16 Q. 18 Are there ready buyers for the propane operations?

17 A. 18 Yes. Southwest has already been contacted by a number of  
18 potential buyers. Per the Stock Purchase Agreement,  
19 Southwest is prevented from initiating any detailed  
20 discussions with these potential buyers. However,  
21 Southwest is hopeful that a transaction can be  
22 consummated within approximately one year of the closing  
23 of the Black Mountain acquisition.

24 Q. 19 How will Southwest operate the propane businesses in the  
25 interim?

26 A. 19 Southwest intends to run the propane businesses "as is"  
27 using existing rates and terms of service.



1 Q. 20 Do you have any final comments?

2 A. 20 Yes. This acquisition should be approved by the  
3 Commission without significant additional conditions,  
4 such as those proposed by Staff. The transaction is  
5 relatively small, yet immediate and future benefits are  
6 readily apparent. Southwest believes it should be given  
7 the opportunity to operate Black Mountain, effect a  
8 smooth transition, and identify any required system  
9 improvements before adjusting the Black Mountain general  
10 margin rates; which were just recently found just and  
11 reasonable by the Commission (March 2001). This will also  
12 provide the Company the opportunity to sell the propane  
13 businesses. A reasonable, normalized year of historical  
14 test data can also be established for the consolidated  
15 operations of the two companies. All of this can be  
16 accomplished prior to the next Southwest general rate  
17 case.

18 Southwest has been providing safe and  
19 cost-effective gas service throughout the southwestern  
20 United States for more than 70 years and in Arizona for  
21 nearly a half century. Southwest is financially sound and  
22 has access to reasonably-priced capital to fund and  
23 operate these properties. The greater presence and vested  
24 interest Southwest has in Arizona will provide  
25 economy-of-scale benefits to the Commission and the  
26 natural gas customers of Black Mountain, which will  
27 ultimately result in a "win-win" for all involved.

1 Q. 21 Does this conclude your prepared rebuttal testimony?

2 A. 21 Yes, it does.

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**EXHIBIT**

*A-2B*  
*Admitted*

BEFORE THE ARIZONA CORPORATION COMMISSION

Prepared Rebuttal Testimony  
of  
BENNETT D. BURKE

Q. 1 Please state your name and business address.

A. 1 My name is Bennett D. Burke. My business address is  
9 South 43rd Avenue, Phoenix, Arizona 85009-4633.

Q. 2 By whom are you employed and in what capacity?

A. 2 I am employed by Southwest Gas Corporation (Southwest or  
the Company) as the director of Gas Operations for the  
Central Arizona Division.

Q. 3 Please state your educational background and business  
experience.

A. 3 I hold a Bachelor of Science degree in Business  
Administration from the University of Phoenix, which I  
obtained in 1991. I have worked for Southwest since 1985,  
but began my utility career working for Southwest's  
predecessor company, Arizona Public Service Company  
(APS), in 1981. I began my employment at APS as a meter  
reader and held positions of increasing responsibility in  
the meter reading department until coming to work for  
Southwest in 1985. At Southwest, I have served as a meter  
reading supervisor, a human resources analyst, as a  
district manager in two Arizona divisions - Wickenburg  
and Casa Grande - and as a director in two Arizona

divisions - director of District Operations in the Southern Arizona Division, and in my current position as director of Gas Operations in Central Arizona.

Q. 4 Please describe the nature of your present job responsibilities and duties with Southwest.

A. 4 As director of Gas Operations for the Central Arizona Division, I oversee the installation, operation and maintenance of Southwest's Central Arizona gas distribution system. This includes responsibility for the following departments: Engineering, Construction, Technical Services, and Division Compliance; and ultimate responsibility for the performance of the 265 employees of the Gas Operations workforce.

Q. 5 Have you previously testified before any regulatory commission?

A. 6 No, I have not.

Q. 7 What is the purpose of your prepared rebuttal testimony in this proceeding?

A. 7 The purpose of my rebuttal testimony is to provide Southwest's response to the operations and safety issues asserted by Commission Staff (Staff) in its direct testimony concerning Southwest's acquisition of the stock of Black Mountain Gas Company (Black Mountain).

Q. 8 Will Southwest's responsibilities for the gas operations of the Central Arizona Division change if the acquisition is approved by the Commission?

A. 8 No, in general, they will not. Southwest will continue to

1 be responsible for ensuring that the gas distribution  
2 system is well-designed, installed, operated, and  
3 maintained. Southwest will also ensure that customers in  
4 the newly-acquired Cave Creek service territory have the  
5 opportunity to enjoy the high levels of customer  
6 satisfaction and safety for which Southwest is well known  
7 throughout the natural gas industry.

8 Q. 9 Have you reviewed the Staff's, Residential Utility  
9 Consumers Office's (RUCO), and the Arizona Utility  
10 Investor Association's (AUIA) testimonies in this  
11 proceeding?

12 A. 9 Yes, I have.

13 Q. 10 Do you have any comments or rebuttal testimony related to  
14 RUCO's or AUIA's testimonies.

15 A. 10 No, I do not. My rebuttal will focus solely on Staff's  
16 testimony.

17 Q. 11 What has the Commission Staff recommended regarding  
18 Southwest's acquisition of Black Mountain?

19 A. 11 The Staff has recommended approval of the acquisition  
20 subject to fourteen specific conditions.

21 Q. 12 Have you reviewed those conditions that deal with  
22 operations and safety issues?

23 A. 12 Yes, I have.

24 Q. 13 Which Staff Conditions involve operations and safety  
25 issues?

26 A. 13 Staff Conditions 9 through 14 relate to operations and  
27 safety issues.

1 Q. 14 Do the conditions suggested by Staff present any concerns  
2 to Southwest?

3 A. 14 Yes. Southwest would require clarification and/or  
4 revision to Staff Conditions 9 through 14 before they  
5 could be accepted by the Company.

6 Q. 15 Please state what Staff is recommending in Condition 9.

7 A. 15 Staff is recommending that Southwest continue to maintain  
8 the existing emergency isolation valves in all current  
9 Black Mountain service areas.

10 Q. 16 Please describe any concern Southwest has with  
11 Condition 9.

12 A. 16 At this time, Southwest has not had the opportunity to  
13 fully review and evaluate the location and condition of  
14 Black Mountain's existing emergency isolation valves.  
15 However, Southwest's commitment has been, and will  
16 continue to be, the safe operation of the distribution  
17 system, including using all appropriate and necessary gas  
18 control methods, which certainly include isolation  
19 valves. That commitment will, of course, extend to the  
20 Black Mountain system if Southwest is authorized to  
21 acquire it. Southwest can commit to review the Black  
22 Mountain valve isolation plan, and maintain those valves  
23 which are appropriate, and install new valves as  
24 necessary in accordance with Southwest Design Standards  
25 and emergency response needs.

26 Emergency response, however, is not just having  
27 valves installed in the distribution system. It is also

1 heavily dependent on the quick mobilization of  
2 highly-trained and skilled workers and the use of  
3 appropriate resources. Southwest, by virtue of its much  
4 greater size and close proximity to Cave Creek, will  
5 bring these considerable resources to bear on emergencies  
6 in that area. Therefore, Southwest can see no reason why  
7 Staff requires this specific recommendation or condition  
8 be contained in any Commission order authorizing the  
9 Black Mountain acquisition.

10 Mandating the maintenance of these particular  
11 valves in perpetuity denies Southwest the ability to make  
12 justified and well-reasoned changes to the system in the  
13 future if needed. Southwest would recommend, instead, a  
14 condition such as "Southwest will review and incorporate,  
15 where appropriate, the Black Mountain valve isolation  
16 plan into its existing valve isolation plan and will  
17 maintain and improve that plan as necessary."

18 Q. 17 Please discuss Staff Condition 10, Staff's  
19 recommendation, and Southwest's response.

20 A. 17 Staff Condition 10 states that, during the 2002 Code  
21 Compliance Audit, Black Mountain stated it was installing  
22 additional emergency isolation valves (approximately 34).  
23 The Staff recommended that if, at the time of the Stock  
24 transfer from Xcel Energy, Inc. to Southwest, Black  
25 Mountain has not completed the installation of all the  
26 currently-planned valves for the Cave Creek Division,  
27 Southwest should complete the installation of those

1 specific valves no later than May 1, 2003. My testimony  
2 regarding Staff Condition 10 and my recommendation is  
3 substantially the same as my testimony for Staff  
4 Condition 9. Rather than committing to the installation  
5 of those specific valves, whose design and location  
6 Southwest has not had the opportunity to fully review, it  
7 would be preferable to fully evaluate the Black Mountain  
8 valve isolation plan, and then ensure that valves are  
9 installed which are necessary and appropriate for the  
10 proper operation of the valve isolation plan in  
11 accordance with Southwest standards and practices. This  
12 will be of greater benefit to the current Black Mountain  
13 customers than simply agreeing to install the 34 valves  
14 previously discussed.

15 Again, Southwest can see no reason why this  
16 recommendation needs to be specifically reflected in the  
17 Commission's authorization of the acquisition. Southwest  
18 is concerned that even though Black Mountain used good  
19 planning and engineering criteria to place these valves  
20 throughout its system, a few years from now their  
21 location may not be appropriate or beneficial to  
22 Southwest's emergency isolation plan.

23 Q. 18 Please describe Staff Condition 11 and its  
24 recommendation.

25 A. 18 Staff Condition 11 states that Southwest shall not allow  
26 the acquisition of Black Mountain to diminish staffing  
27 that would result in service and/or safety degradation in



1           either the current Black Mountain or Southwest service  
2           areas.

3 Q. 19   Does Southwest believe this condition is necessary and  
4           reasonable?

5 A. 19   No, it is not necessary and could result in unintended  
6           consequences. The Commission has not previously commented  
7           on Southwest staffing levels in any of its other service  
8           areas. Southwest recognizes that the Commission has a  
9           strong interest in customer service and safety, and  
10          Southwest shares that strong interest. However, Southwest  
11          believes it is more appropriate for the Commission to  
12          require it to maintain service and safety standards, and  
13          not tie that requirement to staffing or other necessary  
14          business decisions. Southwest successfully maintains its  
15          existing systems with staffing levels it deems  
16          appropriate, supported by technologies as well as  
17          economies of scale for efficiencies, allowing Southwest  
18          to adjust staffing levels as needed while still  
19          maintaining high standards of service and safety.

20 Q. 20   Please describe Staff's Condition 12.

21 A. 20   Staff Condition 12 requires Southwest to continue to  
22          maintain fully operational local field offices in the  
23          cities of Cave Creek and Page, Arizona, as appropriate,  
24          to maintain the quality of service.

25 Q. 21   Please describe or explain Southwest's concern with Staff  
26          Condition 12.

27 A. 21   As I noted in my response to Staff Condition 11,

Southwest believes this is a business decision that it should be able to make based on its experience in operating its other natural gas distribution systems in Arizona. It would not be in the customers' interests for a condition like this to interfere with a potentially sound business decision to relocate or combine a field office sometime in the future, by implying that local field offices must be forever maintained in certain locations. The Commission should provide Southwest with the flexibility to determine the appropriate location and capabilities of its operations centers. Perhaps that is implied by the words "as appropriate" in Staff's condition and recommendation, but that is not clear. Southwest believes it should be able to use its best judgment in locating its offices and operations centers; and not be foreclosed from making sound and cost-efficient and cost-effective business decisions while maintaining the high standards of safety and service the Company's customers rely upon.

Q. 22 Please describe Staff Condition 13.

A. 22 Staff recommends that Southwest must continue Black Mountain's current policy of not using contract personnel for the performance of underground pipeline locating. In essence, Staff is stating that Southwest must use its own staffing resources for this work task.

Q. 23 Please describe Southwest's concerns with Staff Condition 13.

1 A. 23 Southwest does not see any basis for this recommendation,  
2 other than Staff's apparent assumption that well-trained  
3 contract line locators would be less accurate than  
4 utility employees. In fact, in Central Arizona,  
5 Southwest's contract line locators' success ratio mirrors  
6 the Company locators' success ratio. In Arizona,  
7 Southwest procedures require all locators, both contract  
8 and Company, to use two methods of locating. That means  
9 that both contract and Company locators will use maps and  
10 records as well as electronic instruments to locate gas  
11 lines. Then, if any discrepancy exists between the  
12 indicated facility location based upon those two methods,  
13 both contract and Company locators are required to have  
14 Southwest employees dig up and expose the line as part of  
15 the line location process. Southwest also has written  
16 requirements for updating its maps based upon the results  
17 of what is found in the field through this process if  
18 those results differ from what the documentation  
19 indicates. Southwest is certain these procedures exceed  
20 the procedures now used by Black Mountain. In addition,  
21 Southwest's line location accuracy in its Central Arizona  
22 Division is 99.97 percent for the 12-month period ending  
23 December 2002, which included 396,649 line locate  
24 requests. Southwest achieved this excellent record of  
25 accurate line location while using contract line-locating  
26 employees for the majority of the locates, with Southwest  
27 oversight, and following Southwest procedures. It would

1 be better, therefore, for the Commission to require  
2 Southwest to maintain its current standards for training  
3 and qualifying contractors and Southwest employees, while  
4 allowing Southwest the discretion to make the appropriate  
5 business decisions necessary to continue its excellent  
6 record of line-location accuracy in all of Southwest's  
7 current and future service areas. In addition, it would  
8 be unreasonable and potentially costly to Southwest's  
9 customers to maintain two separate and unequal policies  
10 and processes for line locating - one for the current  
11 Black Mountain service areas and one for Southwest's  
12 existing Arizona service areas.

13 Q. 24 Please describe Staff Condition 14 and its  
14 recommendation.

15 A. 24 Staff Condition 14 states that Southwest will complete  
16 all mapping of the Black Mountain pipeline system no  
17 later than May 1, 2003, consistent with Black Mountain's  
18 2002 Code Compliance Audit. In essence, Staff is  
19 recommending that Southwest complete the paper mapping  
20 process that Black Mountain has started.

21 Q. 25 Please describe Southwest's concerns with Staff  
22 Condition 14.

23 A. 25 Southwest has completely different mapping systems and  
24 standards than does Black Mountain. Southwest has an  
25 electronic mapping system. Southwest does not believe it  
26 is reasonable or prudent for the Commission to require  
27 it, as the new owner of the system, to complete this

1 commitment without being able to first analyze the  
2 resources it will take to complete the mapping using the  
3 Black Mountain mapping system and standards. Furthermore,  
4 Southwest should be allowed the opportunity to analyze  
5 whether it makes sense to complete the mapping using the  
6 Black Mountain system and standards at all. Southwest may  
7 find, instead, that it is much more efficient and  
8 effective to incorporate the Black Mountain maps into  
9 Southwest's mapping systems, using Southwest standards,  
10 particularly since the current Black Mountain service  
11 territory will eventually become part of the Central  
12 Arizona Division if the proposed acquisition is  
13 consummated.

14           Regardless of the system in which the Black  
15 Mountain mapping is completed, the May 1, 2003 deadline  
16 is unreasonable. A more appropriate and reasonable  
17 deadline should be established. Southwest proposes that  
18 it should be allowed at least 18 months after approval of  
19 the acquisition, or until December 31, 2004, whichever is  
20 later, to complete the mapping of the current Black  
21 Mountain service area.

22 Q. 26 Are there other conditions proposed by Staff that  
23 Southwest wishes to address?

24 A. 26 Yes. Condition 3 proposes that Southwest shall not allow  
25 the quality of service in either Southwest or Black  
26 Mountain service territories to decline as a result of  
27 the acquisition. Specifically, the number of service

1 complaints should not increase, response time for service  
2 should not increase, and service interruptions shall not  
3 increase.

4 Southwest already has an excellent record at the  
5 Commission among the regulated utilities, by Staff's own  
6 testimony in this proceeding; noting only one such  
7 complaint per 10,000 customers for Southwest (with a  
8 customer base of 800,000) over the most recent three-year  
9 period, compared to eight such complaints per 10,000  
10 customers for Black Mountain (with a customer base of  
11 7,900). Providing outstanding customer service is a  
12 hallmark at Southwest and a key focus of our operations.

13 While Southwest can understand Staff's concern that  
14 such an important issue be recognized, the Commission  
15 need not fear that integrating an additional 7,900  
16 customers will negatively impact customer service. To the  
17 contrary, Black Mountain natural gas customers will enjoy  
18 even greater service convenience and offerings through  
19 Southwest than they currently have available. Services  
20 such as summary billing, core aggregation, e-billing,  
21 low-income assistance programs, automated account  
22 systems, and defined customer-appointment windows are  
23 just a few of the additional improvements to customer  
24 service Southwest can offer Black Mountain natural gas  
25 customers. With specialized crews and equipment available  
26 to handle unexpected events, Southwest can rapidly  
27 respond to any situation that may threaten interruptions

1 in service to customers, as well as call upon additional  
2 Company personnel from Nevada and California operations  
3 in extreme emergencies.

4 With all of these services and benefits available  
5 as a matter of course for Southwest customers, the  
6 Commission can approve the acquisition without this  
7 additional condition.

8 Q. 27 Does Southwest believe that the Commission and Southwest  
9 have common interests related to its acquisition of Black  
10 Mountain's gas facilities and customer base?

11 A. 27 Yes, both Southwest and the Commission have common  
12 interests. The Commission is appropriately interested in  
13 seeing that natural gas utilities provide a high level of  
14 service, responsiveness, and safety to their customers.  
15 It is the Commission's responsibility to ensure any  
16 acquisition is in the public interest. Southwest shares  
17 those same interests, as indicated by its industry  
18 leadership in customer satisfaction, line location  
19 accuracy, emergency response times, and many other  
20 performance measures. For example, Southwest's customers  
21 have consistently rated their satisfaction with natural  
22 gas service at the 90 percent or above level, as measured  
23 by an independent national research firm. The Staff also  
24 acknowledges that Southwest has one of the lowest  
25 customer complaint averages among the major utilities the  
26 Commission regulates in Arizona. Finally, Southwest's  
27 average emergency response time in 2002 has stayed below

1 40 minutes from initial notification to gas-off time.  
2 Even without the specific conditions outlined in Staff's  
3 recommendation for approval of Southwest's acquisition of  
4 Black Mountain, customers in the newly-acquired service  
5 areas will enjoy the same high levels of customer  
6 satisfaction and safety that Southwest now offers its  
7 existing customers. Southwest offers demonstrated  
8 improvements and enhancements compared to the existing  
9 service of Black Mountain customers', without any  
10 degradation in quality or service to Southwest's existing  
11 Arizona customer base. As a result, Southwest believes it  
12 is in the public interest for the Commission to approve  
13 its acquisition of Black Mountain.

14 Q. 28 Does this conclude your prepared rebuttal testimony?

15 A. 28 Yes, it does.  
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BEFORE THE ARIZONA CORPORATION COMMISSION

Prepared Rebuttal Testimony  
of  
EDWARD B. GIESEKING

**EXHIBIT**

A-2C  
*Admitted*

Q. 1 Please state your name and business address.

A. 1 My name is Edward B. Giesecking. My business address is  
5241 Spring Mountain Road, Las Vegas, Nevada 89150-0002.

Q. 2 By whom and in what capacity are you employed?

A. 2 I am employed by Southwest Gas Corporation (Southwest) as  
Senior Manager/Pricing and Tariffs Department.

Q. 3 Please state your educational background and business  
experience.

A. 3 I received a Bachelor of Arts degree in Business  
Management from Sonoma State University in 1985 and a  
Master of Arts degree in Regulatory Economics from New  
Mexico State University in 1993.

From 1983 through 1993, I was employed by Pacific  
Gas and Electric Company in various capacities, including  
the position of Regulatory Analyst in the Revenue  
Requirements and Rates departments. My responsibilities  
as a Regulatory Analyst primarily involved the  
development of pricing structures and supporting rate  
requests before the California Public Utilities  
Commission (CPUC).

In 1993 I began my career with Southwest as a  
Specialist in the Rates Department. I was assigned

1 responsibility for monitoring and participating in  
2 California regulatory activity and reporting impacts to  
3 Company management. In 1995 I was promoted to Senior  
4 Specialist in the Regulatory Affairs department and  
5 subsequently was promoted to Manager of the department in  
6 1998. In addition to the day to day management of the  
7 department, my responsibilities included the supervision  
8 of regulatory filings to ensure timely and accurate  
9 submittals and performing in the capacity of company  
10 liaison with state regulatory agency and state consumer  
11 advocate professionals.

12 In August 2002, I was transferred to the Pricing  
13 and Tariffs Department and promoted to my current  
14 position. I report to the Vice President/Pricing and am  
15 responsible for the development of rate design and tariff  
16 proposals for Southwest in association with proceedings  
17 before Southwest's various regulatory agencies.

18 Q. 4 Have you previously testified before any regulatory  
19 commissions?

20 A. 4 Yes, I have submitted pre-filed testimony and testified  
21 before the CPUC.

22 Q. 5 What is the purpose of your prepared rebuttal testimony  
23 in this proceeding?

24 A. 5 My testimony responds to issues addressed in the prepared  
25 direct testimonies of Mr. Joel M. Reiker and Mr. Robert  
26 G. Gray from the Arizona Corporation Commission  
27 (Commission) Utilities Division (Staff) and Mr. Rodney

1 L. Moore from the Residential Utility Consumer Office  
2 (RUCO) concerning post-acquisition rates and services.  
3 Specifically, I am rebutting proposals to: (1) prohibit  
4 Southwest from seeking future rate recovery of any  
5 acquisition premium; (2) prohibit Southwest from seeking  
6 recovery of any costs associated with the acquisition;  
7 (3) require Southwest to make its books and records  
8 concerning any unregulated activity available in the  
9 Phoenix metropolitan area (4) adjust the margin, or  
10 non-gas portion of rates, of newly-acquired Black  
11 Mountain Gas Company (Black Mountain) natural gas  
12 customers outside of a general rate case; (5) postpone  
13 the Southwest/Black Mountain gas portfolio and Purchased  
14 Gas Cost Adjustment Provision (PGA) consolidation for a  
15 period of up to 18 months; and (6) require Southwest to  
16 make a filing to begin offering the Page Division propane  
17 customers service options that are currently available to  
18 Southwest's customers.

19 Q. 6 Please explain the difference between the terms  
20 "acquisition premium" and "acquisition adjustment."

21 A. 6 An acquisition premium is very simply calculated as the  
22 difference between an asset's purchase price and book  
23 value of the asset (original value less depreciation).  
24 Acquisition adjustment refers to the ratemaking treatment  
25 of the acquisition premium. The determination of any  
26 acquisition adjustment should take into account savings  
27 and benefits associated with the transaction.

1 Q. 7 Staff recommends that the Commission impose conditions  
2 that would prohibit Southwest from seeking future rate  
3 recovery of any acquisition premium or any costs  
4 associated with the acquisition. Is it appropriate for  
5 the Commission to make a determination in this proceeding  
6 on either of these issues?

7 A. 7 No. Staff seems to have confused "acquisition premium"  
8 with "acquisition adjustment" in its recommendation. The  
9 determination of any acquisition adjustment should not be  
10 prejudged before considering any savings and benefits  
11 attributable to the acquisition. Such a determination  
12 would be speculative at this time, and should be  
13 postponed until Southwest has had an opportunity to  
14 operate the Black Mountain property and determine  
15 operational and administrative efficiencies resulting  
16 from the acquisition. Similarly, it is inappropriate to  
17 make a determination on the rate recovery of costs  
18 associated with the acquisition without considering  
19 efficiencies and customer benefits of the transaction.

20 Q. 8 When should the Commission consider the determination of  
21 any acquisition adjustment or recovery of costs  
22 associated with the acquisition?

23 A. 8 Southwest's next general rate case is the appropriate  
24 venue to analyze and make a determination on these  
25 issues. At that time, Southwest will have had the  
26 opportunity to more fully determine and measure any  
27 efficiency gains and customer benefits and will be in a

1 position to propose ratemaking treatment.

2 Q. 9 Has the Commission previously ruled on this issue?

3 A. 9 Yes. In Decision No. 60167, the Opinion and Order in  
4 Southwest's acquisition of Ajo Improvement Company (AIC),  
5 the Commission stated, "Southwest Gas' pending rate case,  
6 where the effect on rate payers can be thoroughly  
7 analyzed, is the proper forum for determining the  
8 treatment of the acquisition adjustment."

9 Q. 10 As a condition to the acquisition, Staff recommends the  
10 following:

11 "SWG shall not use any utility plant or other  
12 property, that is used or necessary for the  
13 provision of utility service, for any  
14 unregulated activity unless SWG maintains  
15 appropriate books and records of account  
16 detailing the nature of such unregulated  
17 activity and providing appropriate allocations  
18 between activities relating to SWG's provision  
19 of utility service and the unregulated  
20 activity. SWG's books and records concerning  
21 all unregulated activities shall be subject to  
22 the Commission's review and shall be made  
23 available in the Phoenix metropolitan area or,  
24 at the Commission's request, where the records  
25 are maintained, on ten days notice."

20 Do you have any comments or concerns regarding this  
21 proposed condition?

22 A. 10 Yes. First of all, Southwest agrees with Staff regarding  
23 the necessity of keeping appropriate books and records  
24 detailing the activities of Southwest's regulated and  
25 unregulated operations; regardless of whether this is  
26 made a condition of the acquisition, Southwest will  
27 maintain and keep such records. Southwest also agrees

1 with Staff that it has an obligation to provide the  
2 Commission with the opportunity to review such books and  
3 records. However, Southwest takes exception with the  
4 Staff condition that, unless the Commission requests  
5 otherwise, Southwest should have the obligation to make  
6 the books and records available at a location different  
7 from the normal business location for those records.

8       Upon request, Southwest routinely provides the  
9 Staff copies of books and records and other company  
10 materials when the reproduction of those materials is not  
11 burdensome. When requested materials are voluminous, it  
12 is common practice for the Staff to conduct their review  
13 at the location where the materials are normally stored.  
14 This "standard practice" should be sufficient for the  
15 purpose of Staff reviewing Southwest's regulated and  
16 unregulated activities post acquisition.

17       Further, Staff's proposed condition is inconsistent  
18 with the language in Arizona Revised Statutes (A.R.S.)  
19 § 40-242, which contemplates that, unless the Commission  
20 by order were to require otherwise, Southwest would not  
21 have an obligation to make books and records available at  
22 any location other than the normal business location for  
23 such records. As a practical matter, Southwest has no  
24 intention of awaiting a Commission order before making  
25 books and records available whenever and wherever the  
26 Commission designates, and Southwest never has. However,  
27 in Southwest's view, an order ought not to be issued in

1 this proceeding which would effectively eviscerate what  
2 is contemplated by the legislation.

3 **REGULATED NATURAL GAS OPERATIONS (CAVE CREEK DIVISION)**

4 Q. 11 Briefly summarize the proposal that Southwest made in its  
5 filing for rates, charges and terms of conditions of  
6 service for customers acquired in this acquisition.

7 A. 11 Southwest's rate transition plan for the Black Mountain  
8 regulated natural gas customers contains three major  
9 elements: (1) current Black Mountain non-gas volumetric  
10 rates and customer charges would remain in effect until  
11 rates are approved in Southwest's next general rate case;  
12 (2) Southwest's miscellaneous charges and terms and  
13 conditions of service would apply to the acquired  
14 customers; and (3) the gas cost balancing account of  
15 Southwest's current customers and the gas cost balancing  
16 account of the acquired customers would be combined and  
17 Southwest's gas cost rates would be applicable to the  
18 acquired customers.

19 Q. 12 After considering the direct testimony in this  
20 proceeding, does Southwest have any modifications to its  
21 post-acquisition rate proposal?

22 A. 12 Yes. To address the Staff's concern regarding potential  
23 customer confusion if certain components of rates are  
24 adjusted and others are not adjusted, Southwest proposes  
25 to serve the acquired customers at their existing rates  
26 until Southwest adjusts rates in its next general rate  
27 case. This would include the Black Mountain miscellaneous

1 service charges. To the extent that Southwest offers a  
2 service that Black Mountain does not offer and for which  
3 Black Mountain does not have a charge, the acquired  
4 customers would be subject to the Southwest charge for  
5 that service. Under this proposal, there would be no rate  
6 impact associated with the acquisition.

7 At the time of the monthly PGA Adjustment following  
8 approval of the acquisition, Southwest would true-up the  
9 gas costs of existing Southwest customers and the  
10 acquired customers, freeze the PGA balance associated  
11 with the acquired customers, and would begin making PGA  
12 deferrals on a combined basis. Southwest would make a  
13 filing with the Commission requesting approval to  
14 establish a surcharge or surcredit to recover or refund  
15 any balance in the Black Mountain PGA account to the  
16 acquired customers.

17 Q. 13 Does Black Mountain currently employ a monthly gas cost  
18 adjustment mechanism?

19 A. 13 Yes, it does. Southwest's rate transition proposal would  
20 not introduce any concept with which Black Mountain  
21 customers are not already familiar.

22 Q. 14 Staff claims that Black Mountain acquisition customers  
23 would be inequitably burdened if Black Mountain rates are  
24 not set equal to current Southwest rates at the time of  
25 the Black Mountain dissolution; thereby leading to  
26 customer complaints of inequitable treatment. What is  
27 your opinion regarding this concern?



1 A. 14 The acquired Black Mountain customers rates will remain  
2 stable; there will be no service degradation to Black  
3 Mountain customers; and services not currently offered to  
4 Black Mountain customers that are available to Southwest  
5 customers will be made available to them. These are  
6 examples of immediate benefits, not burdens, to the  
7 affected customers. Black Mountain customers were made  
8 aware of the acquisition plan filing through a direct  
9 customer notice, and to the best of Southwest's  
10 knowledge, not one Black Mountain customer has raised an  
11 issue with Southwest's filing.

12 Moreover, the rates that Black Mountain customers  
13 are currently paying, and would continue to pay under  
14 Southwest's proposal, have been deemed just and  
15 reasonable by this Commission as recently as March 2001.

16 If, for any reason, the acquisition should not be  
17 consummated, Black Mountain customers will not be  
18 provided the opportunity to take advantage of expanded  
19 services offered by Southwest.

20 Q. 15 Has Staff previously supported continuing the assessment  
21 of an acquired entity's existing rates in any prior  
22 Southwest acquisition?

23 A. 15 Yes. In its Report to the Commission in Docket Nos.  
24 E-1025-96-473 and U-1551-96-473, the Southwest purchase  
25 of the gas distribution assets of AIC, the Staff  
26 recommended that Southwest charge the AIC customers AIC's  
27 current rates, including gas cost and purchased gas

adjuster rates, until the disposition of Southwest's next general rate case.

Q. 16 Was the relative difference between Southwest rates and AIC rates in the AIC purchase and between Southwest rates and Black Mountain rates in the Black Mountain acquisition similar?

A. 16 Yes, the relative difference in rates in the two cases is comparable: Southwest's tariffed rate per therm was lower than the AIC rate per therm and Southwest's current rate per therm is lower than the current Black Mountain rate.

Q. 17 Did Staff conclude in its Report on the AIC purchase that AIC customers would be inequitably burdened, be likely to complain of inequitable treatment, or be confused?

A. 17 No. Staff reached no such conclusions, though circumstances were similar.

Q. 18 Has Staff made a finding or assertion that the current rates for Black Mountain customers are excessive or that they have resulted in an over-earning of authorized revenue?

A. 18 Not that I am aware.

Q. 19 RUCO recommends that Southwest be required to file a rate application within three years. Is Southwest opposed to this recommendation?

A. 19 No. Within that time frame, Southwest will gain experience operating the acquired property and will be able to gather the data necessary to perform the analyses required for a rate case filing.

1 REGULATED PROPANE OPERATIONS (PAGE DIVISION)

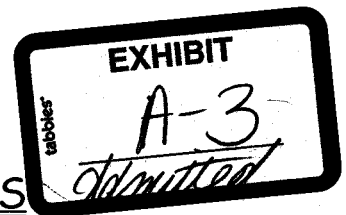
2 Q. 20 Both Staff and RUCO approve of Southwest's plan to  
3 continue service to the Black Mountain propane division  
4 under Black Mountain's current rates and tariff  
5 provisions until Southwest's disposal of the property.  
6 However, in the event Southwest does not effect a  
7 disposal of the property within 18 months of the  
8 Commission's approval of the acquisition, Staff  
9 recommends that Southwest be required to make a filing to  
10 begin offering the Page Division propane customers  
11 service options that are currently available to  
12 Southwest's customers. Does Southwest agree with this  
13 recommendation?

14 A. 20 No. As long as Southwest is actively working toward the  
15 goal of marketing the propane property, there should not  
16 be a requirement to make such a filing. In the event the  
17 disposal of the propane property is not completed within  
18 the twelve months contemplated in the Application,  
19 Southwest will file a notice with the Commission that  
20 provides the status of its efforts. Southwest suggests  
21 that after review of the report, the Commission, at that  
22 time, will likely be in a better position to determine  
23 whether Southwest should expand the services currently  
24 provided to the propane customers.

25 Q. 21 Does this conclude your prepared rebuttal testimony?

26 A. 21 Yes, it does.

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## SERVICES PROVIDED TO OUR CUSTOMERS

### Payment Options

- **Automatic Payment Plan (APP)**  
The Automatic Payment Plan allows you to pay your Southwest Gas bill with an automatic withdrawal from your checking or savings account.
- **Equal Payment Plan (EPP)**  
The Equal Payment Plan allows you to proportion your residential gas bill payments over a 12-month period.
- **Deferred Payment Plan**  
If a hardship is demonstrated and you have an outstanding bill, this plan allows you to pay your bill over an extended period of time, at no additional charge.
- **Agency Referrals**  
Our offices can refer you to a social service or government agency that may be able to provide assistance with payment of your gas bill.
- **Home Banking**  
Home PC Banking is a means of paying paper bills directly from your personal computer. Using PC programs like Quicken, Microsoft Money and in some cases, a financial institution's software, a customer can build a list and pay as many bills as they choose. Bank by Phone is similar to Home PC Banking, except a customer calls a financial institution each month to authorize payment of their bills. We process payments through most "Home Banking" vendors.
- **E-Bill**  
E-Bill is an enhanced process of Home PC Banking. It combines the ability to receive and pay a bill electronically, utilizing the Internet.

- **Gift Announcements**

Gift Announcements can be used as a gift to help pay natural gas bills for friends or family members and can be purchased at any Southwest Gas business office.

- **Mail Payment**

Southwest Gas provides a mailing envelope with the bill, which allows for convenient mailing of payments to our office. The bill is perforated to retain the billing information for the customers' records and a portion to be mailed with the payment.

- **Payment Extensions**

If you anticipate a problem paying your monthly bill, typically payment arrangements can be made to meet your needs.

- **Payment Locations**

In addition to the Southwest Gas payment offices, there are nearly 300 pay stations conveniently located throughout Arizona. Simply put in your address on our Internet site and a map will direct you to the closest locations. Additionally, all Southwest Gas payment offices are equipped with after-hours night drop boxes.

Payments made to Southwest Gas can be made with check, cash and credit card and are posted real-time to the specified account. Returned item charges are \$10.00.

- **Summary Billing**

Customers with multiple accounts have the option to have their bills conveniently summarized each month. This allows for easier manageability.

- **Core Aggregation**

Core Aggregation is a means by which a group of customers can "aggregate" their gas usage and qualify as a transportation customer. These customers can purchase their gas from another supplier and have it transported by the Local Distribution Company (LDC) to their individual accounts.

- **Contract Billing**

Contract Billing automates the process of billing and maintaining Facilities Extensions, Relocation, Billable Damages and Residential Amortization contracts.

- **Deposits**

In most circumstances, we waive the security deposit for seniors, preferred builders and homeowners. Should a deposit be retained on the account, the interest rate on security deposits for our Arizona customers is 6%.

### Customer Services

- **Landlord Agreement Program**

This program provides an automated approach to revert natural gas service into the landlord's name when tenants move out.

- **Third-Party Notifications**

Third-party notification allows a friend or relative to be notified in case of a delinquent bill. While the third party is not responsible for the billing, it can be helpful for the elderly and those that travel frequently.

- **Hearing Impaired and Visually Impaired**

Our call centers are equipped with TDD telecommunication equipment so we can communicate with our hearing-impaired customers.

For our visually impaired customers, our service technicians can mark the thermostat setting on home appliances with a special substance that leaves raised marks at the desired setting.

Our field employees carry special identification cards with Braille markings as a means of identification for those customers who are visually impaired.

We can present the monthly gas bill in Braille. We have also increased the type size for the DUE DATE and AMOUNT DUE on every customer's bill.

- **Language Bank/Language Line**  
To assist our non-English speaking customers, we have customer service representatives available to translate in several different languages. Additionally, we are affiliated with an agency that provides translations to our customer representatives in over 150 languages and dialects.
- **Referral Program**  
Our Energy Specialists can refer you to a reliable contractor or dealer when an appliance needs to be repaired or replaced. The Energy Specialists can also provide answers to your questions on a wide range of subjects from natural gas appliances, programs for conversions and rebates, to questions regarding conservation and the environment.
- **Low-Income Assistance Programs**  
These programs provide a reduced residential rate to eligible Southwest Gas customers.
- **After Hours Automated Account System (AHAAS)**  
Account information, payment extensions, payment options and pay station locations can be obtained after our business offices close.
- **Online Services**  
[www.swgas.com](http://www.swgas.com) provides convenient forms for utility services to be initiated, transferred and disconnected. You can enroll in the Equal Payment Plan (EPP) or obtain an Automatic Payment Plan (APP) application, request appliance information, builder referrals, home energy audits, and directional maps to our offices and pay stations.

Our Internet is current with our rates and tariffs, online self-service meter read verifications, meter reading schedules, job openings, Annual Report, company information and news releases.

- **Energy Share**  
This program is an emergency fund that provides direct assistance to qualified people with unexpected financial difficulties, such as the loss of a job or a medical emergency. All Energy Share donations are managed and distributed by The Salvation Army. One hundred percent of all donations are used to help families and individuals in need. Our

customers can indicate the amount they would like to contribute each month or make a one-time donation to the program.

- **Customer Appreciation Week**

Although we appreciate our customers every day, we make a dedicated effort to reinforce the message each October during National Customer Appreciation Week. While every office individualizes the celebration week, communication is made with every customer to show appreciation.

- **Cookbooks and promotions**

On occasion, cookbooks promoting natural gas use are printed in conjunction with local chefs in our service areas. The cookbooks are available on our Internet site and in booklet form. Other promotions have been done to introduce new programs and safety issues.

- **Customer Satisfaction Surveys**

To ensure our customers receive the best possible service, a monthly Customer Satisfaction Survey is conducted by an outside, independent company. Results are taken very seriously and looked at as a means of service improvement.

- **Consumer Education**

We take pride in our communication efforts with our customers. We have messages that print on the bill each month, bill inserts, direct mailers, News To Use publications and safety awareness programs to mention a few. Our work with the communities and education programs is something we are tremendously proud of.

### Field Services

- **Customer Information Packets**

Customers having their gas turned on are left with an information package. In addition to welcoming them as a customer, the booklet contains important safety information, customer service options, contact information, payment information and other useful documentation.



- **Field Collections and Delinquent Bills**

Letters notifying customers of delinquent payment status are sent automatically and for a \$20.00 (plus tax) fee, our Arizona field employees will accept payment of utility bills at the customer residence or business location.

- **Technology**

ERT (Encoder, Receiver, and Transmitter) meters are being installed in designated areas; this will provide accurate, electronic readings, safely for our employees and convenient for our customers.

Field employees are in continual communication with our offices via our Mobile Service applications. Should instructions on a service order change, the message can be instantly relayed to our field personnel. This is also important in an emergency situation.

Our construction departments are all equipped with the capability to locate the underground facilities via our Maps-To-Field system.

- **Appliance Safety Checks**

Service orders are available to safety check natural gas appliances.

- **Appliance Hook-ups**

Service orders are available to hook-up most natural gas appliances.

- **Customer Appointment Settings (CAS)**

Our CAS system will allow our customer representatives to set an appointment window or time for customer convenience.

- **Meter Read Validation**

We are extremely proud of our meter read error ratio. Should the meter read require validation, a reread can be obtained. The Arizona tariff authorizes a \$10.00 fee; however, only in certain circumstances would the fee be assessed to the customer.

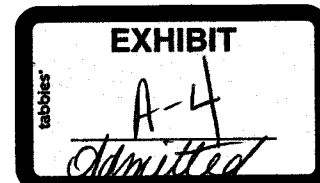
## Other Offerings

- **Customer Support**

Southwest Gas's Customer Relations Staff department supports our Customer Assistance Representatives with training needs (technical and customer relations), new programs and systems support. We have a large staff of employees to assist customers in a timely manner. Our Intranet system allows easy access to resources to assist the staff with information pertinent and helpful to meet our customers' needs. Our business offices are represented in the local communities and our employees are dedicated to our Employee Volunteer Teams (EVT).

- **Monthly Billing**

Customers receive a monthly bill summarizing the usage, providing important information, usage summary for the year, weather information, next meter read date, and other information. Each regular bill presented is due in 19 days.



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P255 Equity **CRPR**

Related Functions

CREDIT PROFILE

**Southwest Gas Corp**

Page 1/1

MOODY'S

- |                          |      |
|--------------------------|------|
| 1) Senior Unsecured Debt | Baa2 |
| 2) Short Term            | WR   |

STANDARD & POOR'S

- |                             |      |
|-----------------------------|------|
| 3) Outlook                  | NEG  |
| 4) LT Foreign Issuer Credit | BBB- |
| 5) LT Local Issuer Credit   | BBB- |

FITCH

- |                          |        |
|--------------------------|--------|
| 6) Outlook               | STABLE |
| 7) Senior Unsecured Debt | BBB    |
| 8) Preferred Stock       | BBB-   |
| 9) Short Term            | F2     |

DUFF & PHELPS

- |                           |    |
|---------------------------|----|
| 10) Senior Unsecured Debt | WR |
| 11) Preferred Stock       | WR |

Australia 61 2 9777 8600

Brazil 5511 3048 4500

Europe 44 20 7330 7500

Germany 49 69 920410

Hong Kong 852 2977 6000 Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000

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P255 Equity CRPR

Related Functions	Company Tree Ratings	CREDIT PROFILE
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Xcel Energy Inc

Page 1/1

MOODY'S

1) Issuer Rating	Baa3	*-
2) Bank Loan Debt	Baa3	*-
3) Senior Unsecured Debt	Baa3	*-
4) Preferred Stock	Ba2	*-
5) Short Term	NP	

STANDARD & POOR'S

6) LT Foreign Issuer Credit	BBB	*
7) LT Local Issuer Credit	BBB	*
8) ST Foreign Issuer Credit	A-3	*
9) ST Local Issuer Credit	A-3	*

FITCH

10) Senior Unsecured Debt	BB+	*-
11) Preferred Stock	BB	*-
12) Equity Linked	BB+	*-
13) Short Term	WR	

Australia 61 2 9777 8600

Brazil 5511 3048 4500

Europe 44 20 7330 7500

Germany 49 69 920410

Hong Kong 852 2977 6000 Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000

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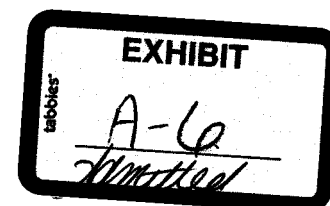
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# Black Mountain Gas Cave Creek/Southwest Gas Corporation Margin Comparison

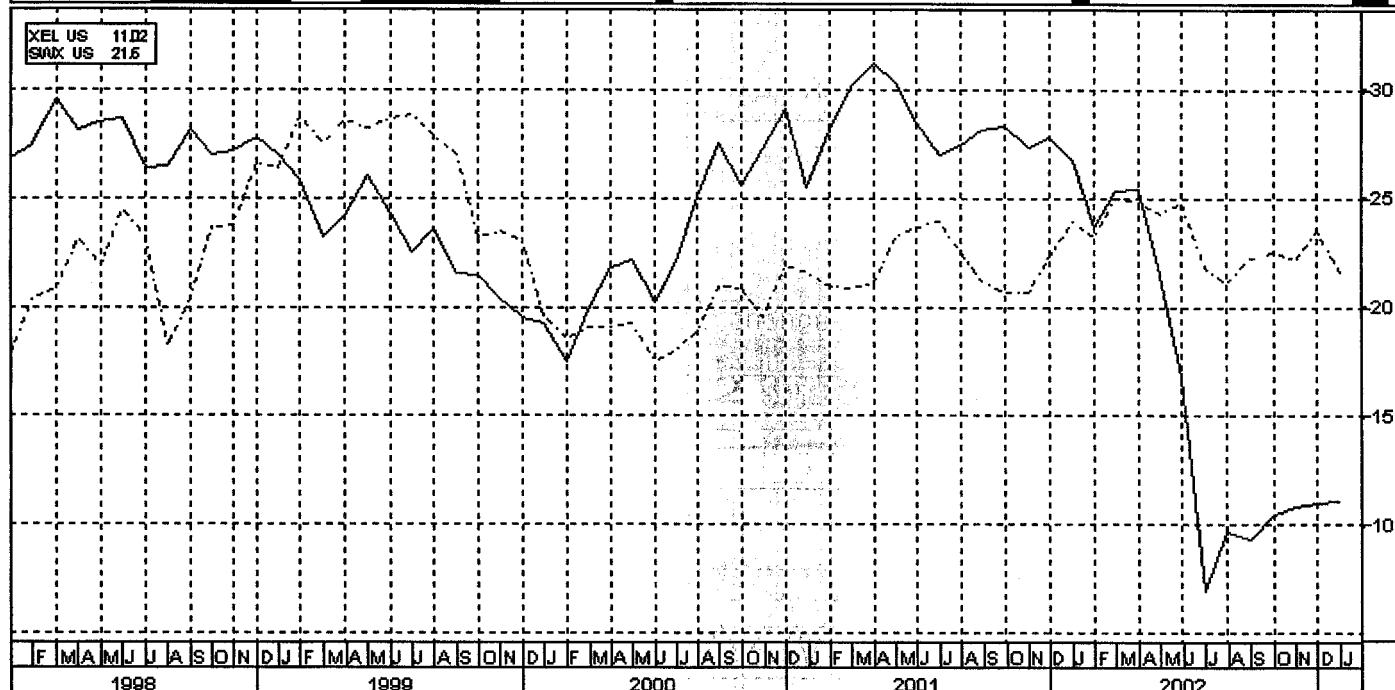
Residential Customers	7,560	(Gray, Page 2)
Average Residential Usage	59	(RGG-3, Page 1)
Commercial Customers	211	(Gray, Page 2)
Average Commercial Usage	437	(RGG-3, Page 2)

	<u>BMG</u>	<u>SWG</u>	<u>Difference</u>
Residential Summer Bill at 59 Therms	72.73	63.43	
Less Gas Cost	29.94	29.94	
Summer Margin/Customer/Month	42.79	33.49	
Residential Summer Season Margin	\$1,940,761	\$1,518,913	\$421,848
Residential Winter Bill at 59 Therms	72.73	65.11	
Less Gas Cost	29.94	29.94	
Winter Margin/Customer/Month	42.79	35.17	
Residential Winter Season Margin	\$1,940,761	\$1,595,118	\$345,643
Commercial Bill at 437 Therms	505.06	403.73	
Less Gas Cost	217.56	217.56	
Commercial Margin/Customer/Month	287.50	186.17	
Commercial Annual Margin	\$727,938	\$471,370	<u>\$256,568</u>
Total Annual Margin Difference			<u><u>\$1,024,059</u></u>



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**4-IN-1 GRAPH** Name: XCEL 1 Name Set # 9  
 1 XEL US Px1 USD 2 SWX US Px1 USD  
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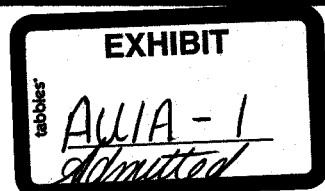


Arizona Utility  
Investors Association

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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
CHAIRMAN  
JAMES M. IRVIN  
COMMISSIONER  
WILLIAM A. MUNDELL  
COMMISSIONER  
JEFF HATCH-MILLER  
COMMISSIONER  
MIKE GLEASON  
COMMISSIONER

IN THE MATTER OF THE APPLICATION FOR ) DOCKET NO.  
APPROVAL OF ACQUISITION PLAN AND, )  
IF APPROPRIATE, WAIVER OF SELECTED ) G-01551A-02-0425  
PROVISIONS OF THE AFFILIATE RULES. )

NOTICE OF FILING

Pursuant to the Procedural Order in this matter, the  
ARIZONA UTILITY INVESTORS ASSOCIATION, INC. (AUIA)  
hereby provides notice of filing the rebuttal testimony of Walter  
W. Meek in the above-captioned proceeding.

Respectfully submitted, this 6th day of February, 2003.

Walter W. Meek, President

CERTIFICATE OF SERVICE

An original and 13 copies  
of the referenced testimony  
were filed this 6thth day of  
February, 2003, with:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

Copies of the referenced testimony  
were delivered this 6<sup>th</sup> day  
of February, 2003, to:

Ernest Johnson, Esq., Utilities Division  
Jane L. Rodda, Esq., Hearing Division  
Lisa Vandenberg, Esq., Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, AZ 85007

A copy of the referenced testimony  
was mailed or faxed this 6<sup>th</sup> day  
of February, 2003, to:

Andrew W. Bettwy, Esq.  
Associate General Counsel  
Southwest Gas Corporation  
5241 Spring Mountain Road  
Las Vegas, Nevada 89102

John Reiber  
Black Mountain Gas Company  
P.O. Box 427  
Cave Creek, AZ 85327

Timothy Berg, Esq.  
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3003 N. Central Ave., Suite 2600  
Phoenix, AZ 85012

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Phoenix, AZ 85003

Scott S. Wakefield, Esq.  
RUCO  
1110 W. Washington, Suite 220  
Phoenix, AZ 85007

  
Walter W. Meek



1 REBUTTAL TESTIMONY

2 OF

3 WALTER W. MEEK  
4  
5  
6  
7

8 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

9 A. My name is Walter W. Meek. My business address is 2100 North Central  
10 Avenue, Suite 210, Phoenix, Arizona 85004.  
11

12 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

13 A. I am the president of the Arizona Utility Investors Association ("AUIA" or  
14 "Association"), a non-profit organization formed to represent the interests  
15 of shareholders and bondholders who are invested in utility companies that  
16 are based in or do business in the state of Arizona.  
17

18 Q. ARE SOME AUIA MEMBERS SHAREHOLDERS OF SOUTHWEST GAS  
19 CORPORATION?

20 A. Yes. AUIA has approximately 6,000 members, including a number of  
21 common shareholders of Southwest Gas Corporation ("Southwest").  
22

23 Q. WHAT IS YOUR BACKGROUND IN REPRESENTING SHAREHOLDER  
24 CONCERNS AND INTERESTS?

25 A. I have been president of AUIA for more than eight years. Prior to that, my  
26 consulting firm managed the affairs of the Pinnacle West Shareholders  
27 Association for 13 years. During this time we have represented  
28 shareholders in numerous rate cases and other regulatory matters and  
29 have published many position papers, newsletters and other documents in  
30 support of shareholder interests.  
31

32 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

33 A. I am here to represent the views of the equity owners of Southwest Gas  
34 Corporation regarding its proposed purchase of Black Mountain Gas  
35 Company ("BMG"). Specifically, my testimony will rebut certain positions  
36 taken by Staff witnesses Joel M. Reiker and Robert G. Gray.

1  
2 Q. HAVE YOU FILED TESTIMONY PREVIOUSLY IN THIS PROCEEDING?

3 A. Yes, but AUIA has withdrawn my previously filed direct testimony in  
4 response to procedural objections raised by Staff.

5  
6 Q. DOES AUIA SUPPORT SOUTHWEST'S MERGER PROPOSAL?

7 A. In general, yes. AUIA believes that this acquisition provides benefits to all  
8 parties and is, therefore, in the public interest. We urge the Commission to  
9 approve this transaction.

10  
11 Q. CAN YOU ELABORATE?

12 A. Of course.

13 In the first place, the BMG service area is poised for significant future  
14 population growth and in that circumstance, we believe consumers there  
15 will be better served ultimately by a larger gas provider...one that has a  
16 major presence in the metropolitan area and in the state.

17 In addition, BMG customers will benefit eventually from lower Southwest  
18 rates and from a combined natural gas portfolio and purchased gas bank  
19 balance.

20 BMG ratepayers will also benefit from customer service programs and  
21 some efficiencies that are not currently available to BMG as a stand-alone  
22 business unit. Such programs include low-income rates, home  
23 weatherization, free appliance connections and an equal payment plan.

24 Although the number of new customers is not large, this transaction also  
25 provides Southwest with an opportunity to broaden its customer base  
26 without significant initial outlays for new infrastructure.

27  
28 Q. DOES SOUTHWEST HAVE A SUPERIOR FINANCIAL PROFILE?

29 A. Not really. As Staff witness Reiker indicated, both Xcel Energy, the parent  
30 of BMG, and Southwest have mediocre credit ratings from Standard &  
31 Poor's and Moody's investors Service. In the eyes of the rating agencies,  
32 Southwest suffers from high leverage, regulatory lag and growth  
33 expenditure commitments, while Xcel suffers from excessive exposure to its  
34 financially troubled unregulated energy marketing affiliate, NRG.

1                   However, as Mr. Reiker points out, this transaction could protect BMG  
2                   customers in the near term from continuing Xcel credit difficulties related to  
3                   NRG.

4  
5           Q.   DO YOU HAVE A REACTION TO THE STAFF'S OVERALL POSITION?

6           A.   Yes. AUIA agrees with Staff's finding that the proposed merger is in the  
7               public interest and its recommendation that the Commission should  
8               approve the application. However, Staff recommends that the  
9               Commssion's approval be contingent on 14 conditions, and AUIA has  
10              comments about five of them. The first three are sponsored by Mr. Reiker  
11              and the last two are sponsored by Mr. Gray.

12  
13          Q.   WHAT ABOUT CONDITION NO. 1?

14          A.   The Staff would prohibit Southwest from ever seeking recovery of any  
15               portion of the purchase price that is above book value. While it makes us  
16               feel uneasy to adopt conditions that reach into infinity, there is no question  
17               that premiums are simply off the table today. AUIA accepts the premium  
18               as a matter that is between shareholders and company management and  
19               doesn't object to this condition.

20  
21          Q.   CONDITION NO. 2?

22          A.   This is a different matter. Staff intends to prohibit Southwest from  
23               recovering any costs associated with the acquisition. Assuming that the  
24               Commission finds this acquisition to be in the public interest, there is no  
25               reason why acquisition costs should not be considered in a rate case where  
26               the Commission can determine whether they were reasonable or not.  
27               AUIA objects to this condition.

28  
29          Q.   CONDITION NO. 3?

30          A.   It is not inappropriate for Staff to require that Southwest's quality of service  
31               not diminish as a result of the acquisition. However, it is unclear whether  
32               the standard to be applied is that experienced by Southwest's current  
33               customers or the BMG customer group. The bottom line is that all of  
34               Southwest customers should receive the same standard of service and it

1 should not deteriorate after this transaction is completed. AUIA has no  
2 objection to a service condition that is applied uniformly.

3  
4 Q. CONDITION NO. 5?

5 A. This condition, sponsored by Mr. Gray, seems to be the most contentious  
6 issue on the table.

7 Staff proposes that BMG customers begin paying Southwest's lower margin  
8 rates at the time BMG is dissolved as a corporation. Staff's condition would  
9 require the dissolution of BMG by July 1, 2004 or that a BMG rate case be  
10 filed on that date.

11 Initially, Southwest indicated its intent to dissolve within about 12 months  
12 after the purchase is completed. But Southwest prefers to postpone rate  
13 adjustments until it has completed a general rate case and it may wish to  
14 postpone BMG's dissolution until that time.

15 Staff seems intent on providing a monetary benefit to BMG customers to  
16 support a finding that the transaction is in the public interest. However,  
17 there are a number of elements that make up such a finding and immediate  
18 rate gratification is not a requirement.

19 It is commonplace for a merged entity to wait a year or longer before filing  
20 a rate case in order to get systems in place, create an operating record and  
21 establish a test year. In the case of BMG, it would make no sense to conduct  
22 a stand-alone rate case in 2004 apart from Southwest Gas.

23  
24 Q. WHAT ALTERNATIVE DO YOU SUGGEST FOR CONDITION NO. 5?

25 A. Because Southwest's last rate case was based on a 1999 test year and the  
26 company typically operates on a three-year cycle, it is reasonable to expect  
27 Southwest to file an application for a general rate increase in 2004, based on  
28 a 2003 test year. Therefore, a more reasonable condition would be to make  
29 dissolution of BMG concurrent with the implementation of new rates and to  
30 require Southwest to file a rate case before the end of 2004.

31  
32 Q. DO YOU HAVE COMMENTS ABOUT CONDITION NO. 6?

33 A. Here, the Staff proposes to combine the purchased gas adjustment (PGA)  
34 mechanisms at the dissolution of BMG. Since this is not a rate matter, it is

1 appropriate to merge the PGAs when the acquisition is complete, as  
2 Southwest suggests. We believe that could produce some immediate  
3 benefit for BMG customers.  
4

5 Q. IS THAT THE EXTENT OF YOUR COMMENTS ON CONDITIONS?

6 A. Yes.  
7

8 Q. DO YOU HAVE ANY CONCLUDING REMARKS?

9 A. Yes. While we believe that this transaction is in the public interest and will  
10 provide long-term benefits for Southwest and BMG customers, it should be  
11 kept in perspective.

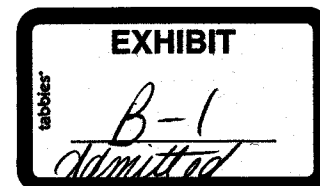
12 BMG currently serves about 7,000 customers. That is about 16 percent of  
13 the annual growth Southwest experiences in Arizona. This acquisition is  
14 not the pot of gold at the end of the rainbow.

15 Yet, Staff has proposed at least three conditions that have negative financial  
16 consequences for Southwest, namely: Condition No. 1, prohibiting  
17 recovery of any acquisition adjustment; No. 2, prohibiting recovery of any  
18 acquisition costs; and No. 5, requiring the Company to install reduced rates  
19 at BMG by the middle of next year or file an essentially useless rate case.

20 If the Commission believes that BMG's customers will fare better in the  
21 long run as customers of Southwest Gas, it should find this acquisition to be  
22 in the public interest and it should hesitate to burden the transaction with  
23 conditions that have marginal value but which could keep the merger from  
24 taking place.  
25

26 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

27 A. Yes, it does.  
28



BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JIM IRVIN  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner

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IN THE MATTER OF THE APPLICATION  
OF SOUTHWEST GAS CORPORATION  
FOR APPROVAL OF ACQUISITION PLAN  
AND, IF APPROPRIATE, WAIVER  
SELECTED PROVISION OF THE  
AFFILIATE RULES

DOCKET NO. G-01551A-02-0425

NOTICE OF FILING REBUTTAL  
TESTIMONY OF JOHN REIBER

Black Mountain Gas hereby files with the Arizona Corporation Commission's Docket  
Control the Testimony of John Reiber in the above-captioned docket.

DATED: February <sup>5+1+</sup>\_\_\_\_, 2003

FENNEMORE CRAIG, P.C.

By Timothy Berg  
Theresa Dwyer  
3003 N. Central Ave, Suite 2600  
Phoenix, Arizona 85012

Attorneys for Black Mountain Gas

An original and 13 copies  
of the foregoing delivered this 5<sup>th</sup>  
day of February, 2003, to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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COPY delivered this 5<sup>th</sup> day of  
February, 2003, to:

Christopher Kempley  
Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

Ernest Johnson  
Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

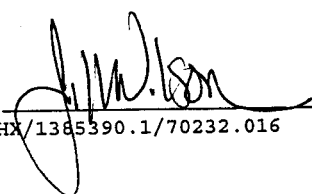
COPY mailed this 5<sup>th</sup> day of  
February, 2003 to:

Andrew E. Bettwy  
Southwest Gas Corporation  
P.O. Box 98510  
Las Vegas, NV 89193-8510

Edward S. Zub  
Southwest Gas Company  
P.O. Box 427  
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349 North Fourth Avenue  
Phoenix, Arizona, 85003

Scott S. Wakefield  
Residential Utility Consumer Office  
1110 West Washington Street, Suite 220  
Phoenix, Arizona 85007

  
\_\_\_\_\_  
PHX/1385390.1/70232.016

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **MARC SPITZER**

Chairman

3 **WILLIAM A. MUNDELL**

Commissioner

4 **JIM IRVIN**

Commissioner

5 **JEFF HATCH-MILLER**

Commissioner

6 **MIKE GLEASON**

Commissioner

7  
8 **IN THE MATTER OF THE APPLICATION**  
9 **OF SOUTHWEST GAS CORPORATION**  
10 **FOR APPROVAL OF ACQUISITION PLAN**  
11 **AND, IF APPROPRIATE, WAIVER**  
12 **SELECTED PROVISION OF THE**  
13 **AFFILIATE RULES**

**DOCKET NO. G-01551A-02-0425**

**REBUTTAL TESTIMONY OF**  
**JOHN REIBER**

14 Q. Please state your name and business address.

15 A. My name is John Reiber. I am the President and CEO of Black Mountain Gas  
16 Company ("Black Mountain"), a wholly-owned utility operating company subsidiary  
17 of Xcel Energy Inc. ("Xcel Energy") My business address is 6021 E. Cave Creek  
18 Road, Cave Creek Arizona, 85331.

19 Q. Please state your educational background and business experience.

20 A. I graduated from Regis University in Denver, Colorado in 1988 with a Bachelor of  
21 Science Degree in Business Administration.

22 From January 1974 to August 2000, I was employed by Public Service  
23 Company of Colorado and then New Century Energies, Inc. ("NCE"), predecessor  
24 companies to Xcel Energy. From August 2000 to March 2001, I was employed by  
25 Xcel Energy Services Inc., the "service company" in the Xcel Energy Inc. holding  
26 company system. I held various positions of Apprentice Gas Fitter, Gas Fitter,  
Technician, Senior Technician and Associate Engineer before being promoted to  
Engineering Supervisor, Denver Metro Division in 1984. From 1984 through



1 2001, I held various management positions including Gas Central Service  
2 Utilization Manager, Gas Distribution Maintenance Manager, Gas Distribution  
3 Emergency Services Manager and Director of Emergency Response and  
4 Dispatch. In March 2001, I was named President and CEO of Black Mountain.

5 Q. What is the purpose of your testimony?

6 A. The purpose of my testimony is to clarify one issue in Staff's pre-filed testimony  
7 and to further Black Mountain's support for the proposed acquisition by Southwest  
8 Gas Corporation ("Southwest") of the outstanding shares of Black Mountain from  
9 Xcel Energy.

10 Q. Please describe Black Mountain's subsidiary relationship to Xcel Energy.

11 A. Black Mountain is the smallest utility subsidiary of Xcel Energy, and is somewhat  
12 geographically remote from the other utility systems. (Public Service Company of  
13 Colorado serves portions of Colorado, and Southwestern Public Service  
14 Company provides electric service in eastern New Mexico.) Xcel Energy has  
15 decided to sell Black Mountain to Southwest so it can focus on its "core" operating  
16 companies. Southwest provides a good fit for the Black Mountain natural gas  
17 utility operation in Cave Creek because Southwest is geographically closer than  
18 Minnesota; in fact, Southwest almost surrounds the Black Mountain natural gas  
19 service area and Black Mountain purchases natural gas supply from Southwest.

20 Q. Do you have an opinion as to whether the current customers of Black Mountain  
21 would be served well by being customers of Southwest?

22 A. Yes, I do. Although, in my opinion, Black Mountain provides a safe, reliable  
23 natural gas service at a reasonable cost, the reality is that there are several  
24 programs conducted by Southwest that are not now available to Black Mountain  
25 customers. It is my understanding that Black Mountain's current customers in the  
26 Cave Creek operating area would begin to enjoy the benefits of those programs

1 immediately upon consummation of the stock purchase transaction. A description  
2 of the programs is included in the pre-filed rebuttal testimony of Southwest.

3 Q. Have you read the pre-filed testimony of the Commission Staff in this proceeding?

4 A. Yes, I have.

5 Q. What is Black Mountain's reaction to Staff's pre-filed testimony?

6 A. I would like to clarify one issue identified in Staff's pre-filed testimony. In the  
7 testimony of Robert Miller on page 3, lines 10 to 14, Mr. Miller's statement may  
8 lead the reader to believe that the 2002 Code Compliance Audit requires BMG to  
9 install approximately 34 emergency isolation valves prior to May 1, 2003. I agree  
10 that a discussion occurred regarding the BMG Emergency Isolation Valve Plan.  
11 Further, Mr. Miller was told that approximately 34 additional valves may be  
12 required to reduce the number of customers affected during emergency  
13 conditions. BMG did not, however, state that all valves required installation.  
14 BMG had several valves in the distribution system that were categorized as  
15 distribution valves. BMG has changed the categorization of some of the existing  
16 distribution valves to emergency valves in concert with installation of other valves.  
17 Additionally, the Code Compliance Audit did not specifically identify the  
18 Emergency Valve Isolation Plan as a Probable Noncompliance item. However,  
19 BMG believes the Emergency Valve Isolation Plan will meet the requirements of  
20 the ACC Office of Pipeline Safety by May 1, 2003.

21 Q. Do you have an opinion regarding the impact of the proposed stock acquisition on  
22 the current propane service customers of Black Mountain?

23 A. Yes. My understanding is that consummation of the stock purchase transaction  
24 would have no discernible impact on the Page Division customers. It is my  
25 understanding that the Page Division operations would continue "business as  
26 usual" by Southwest. As reflected in Southwest's Application, Southwest intends

1 to market the Page Division properties immediately upon consummation of the  
2 stock purchase transaction. It is further my understanding that, so long as the  
3 Page Division properties are owned by Southwest, the operations will be  
4 conducted separately and the change in ownership is expected to be transparent  
5 to current Black Mountain customers.

6 Q. Do you have any further statements you would like to make in support of the  
7 proposed acquisition by Southwest of the outstanding shares of Black Mountain?

8 A. Yes. I want to reiterate Black Mountain's support for the Commission's prompt  
9 approval of the proposed acquisition by Southwest of the outstanding shares of  
10 Black Mountain so the benefits of the acquisition can be achieved.

11 Q. Does that conclude your pre-filed testimony?

12 A. Yes, it does.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **MARC SPITZER**

Chairman

3 **WILLIAM A. MUNDELL**

Commissioner

4 **JIM IRVIN**

Commissioner

5 **JEFF HATCH-MILLER**

Commissioner

6 **MIKE GLEASON**

Commissioner

7 **IN THE MATTER OF THE APPLICATION**  
8 **OF SOUTHWEST GAS CORPORATION**  
9 **FOR APPROVAL OF ACQUISITION PLAN**  
10 **AND, IF APPROPRIATE, WAIVER**  
11 **SELECTED PROVISION OF THE**  
12 **AFFILIATE RULES**

**DOCKET NO. G-01551A-02-0425**


**AFFIDAVIT OF JOHN REIBER**

11 John Reiber, of lawful age, being first duly sworn, deposes and states:

12 1. My name is John Reiber. I am the President and CEO of Black Mountain  
13 Gas Company. I have caused to be filed written rebuttal testimony in Docket No.  
14 G-01551A-02-0425.

15 2. I hereby swear and affirm that my answers contained in the attached  
16 testimony to the questions therein propounded are true and correct to the best of my  
17 knowledge and belief.

18 Further Affiant sayeth not.

19   
20 John Reiber

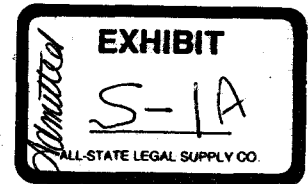
21 SUBSCRIBED AND SWORN to before me this 5<sup>th</sup> day of February, 2003.



23   
24 Notary Public

25 My Commission Expires: 12-30-2006  
26

BEFORE THE ARIZONA CORPORATION COMMISSION



WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

IN THE MATTER OF THE APPLICATION OF )  
SOUTHWEST GAS COMPANY FOR )  
APPROVAL OF ACQUISITION PLAN AND, IF )  
APPROPRIATE, WAIVER OF SELECTED )  
PROVISIONS OF THE AFFILIATE RULES )  
\_\_\_\_\_ )

DOCKET NO. G-01551A-02-0425

**REDACTED**

DIRECT

TESTIMONY

OF

JOEL M. REIKER

SENIOR PUBLIC UTILITIES ANALYST

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 20, 2002

**EXECUTIVE SUMMARY**  
**SOUTHWEST GAS CORPORATION**  
**DOCKET NO. G-01551A-02-0425**

Southwest Gas Corporation ("SWG") is seeking approval to acquire 100 percent of the stock of Black Mountain Gas Company ("BMG"). SWG also requests authority to subsequently transfer the assets and Certificate of Convenience and Necessity ("CC&N") of BMG to SWG, to consolidate operations.

Under the terms of the agreement between SWG and BMG's current parent, Xcel Energy, Inc. ("Xcel"), SWG will purchase the stock of BMG. Within twelve months of the close of the stock sale, BMG's assets and CC&N will be transferred to SWG, and BMG will be dissolved. SWG ultimately plans to consolidate the rates and operations of BMG's Cave Creek division with its own. SWG intends to sell all of BMG's propane facilities located in Page, Arizona within twelve months of the close of the transaction.

Mr. Reiker provides Staff's analysis of the expected financial impact of the acquisition on BMG. According to Staff's analysis, SWG has at least the same level of financial capability as Xcel. While BMG may not see any significant short-term financial benefits resulting from the acquisition, under SWG it will be shielded from the near-term company-specific risks that Xcel currently faces. In terms of market risk, SWG is riskier than Xcel.

Staff recommends approving SWG's proposed acquisition of BMG's stock and the subsequent transfer of BMG's assets and CC&N to SWG, subject to fourteen conditions. Staff also recommends that the Commission waive compliance with the affiliated interests rules as they may apply to this case.

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
Purpose of Testimony .....	1
Southwest Gas Corporation Description .....	2
Black Mountain Gas Company Description .....	3
Xcel Energy, Inc. Description .....	3
The Proposed Transaction .....	3
FINANCIAL ANALYSIS .....	7
SWG's Financial Capability .....	7
Market Risk Comparison .....	8
Financial Impact on BMG .....	9
The Acquisition Adjustment .....	11
Access to Information .....	12
CONSUMER SERVICES ANALYSIS .....	12
CONCLUSIONS AND RECOMENDATIONS .....	13

**INTRODUCTION**

**Q. Please state your name, occupation, and business address.**

A. My name is Joel M. Reiker. I am a Senior Public Utilities Analyst employed by the Arizona Corporation Commission ("ACC" or "Commission") in the Utilities Division ("Staff"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

**Q. Briefly describe your responsibilities as a Senior Public Utilities Analyst.**

A. In my capacity as a Senior Public Utilities Analyst, I provide recommendations to the Commission on mergers, acquisitions, financings and sales of assets. I also perform studies to estimate the cost of capital for utilities that are seeking rate relief.

**Q. Please describe your educational background and professional experience.**

A. In 1998, I graduated cum laude from Arizona State University, receiving a Bachelor of Science degree in Global Business with a specialization in finance. My course of studies included classes in corporate and international finance, investments, accounting, and economics. In 1999, after working as an internal auditor for one year, I was employed by the Commission as an Auditor III in the Accounting & Rates Section's Financial Analysis Unit. Since that time, I have attended various seminars and classes on general regulatory and business issues, including the cost of capital and the use of energy derivatives. I was promoted to a Senior Rate Analyst in December of 2000.

**Purpose of Testimony**

**Q. What is the purpose of your testimony in this case?**

A. The purpose of my testimony is to provide Staff's recommendations and four of Staff's conditions regarding approval of Southwest Gas Corporation's ("SWG") Application to



1 Acquire Black Mountain Gas Company ("BMG"). I also present Staff's specific analysis  
2 of the financial impact of the acquisition.

3  
4 **Q. What other Staff witnesses sponsor testimony and what do they address?**

5 A. Mr. Robert G. Gray addresses rates, purchased gas adjustor issues, and gas procurement  
6 activities, and Mr. Robert Miller addresses safety and operational issues.

7  
8 **Q. What is Staff's recommendation in this case?**

9 A. Staff recommends approving SWG's proposed acquisition of BMG's stock and the  
10 subsequent transfer of BMG's assets and CC&N to SWG, subject to fourteen conditions.  
11 Staff also recommends that the Commission waive compliance with the affiliated interests  
12 rules as they may apply to this case.

13  
14 **Southwest Gas Corporation Description**

15 **Q. Please provide a brief description of SWG.**

16 A. SWG is engaged in the business of purchasing, transporting, and distributing natural gas in  
17 portions of Arizona, Nevada and California. SWG is the largest distributor in Arizona,  
18 selling and transporting natural gas in most of central and southern Arizona, including the  
19 Phoenix and Tucson metropolitan areas. According to its December 31, 2001, Form 10-K  
20 filed with the Securities and Exchange Commission ("SEC"), SWG had 785,000  
21 customers in Arizona. SWG is also engaged in the business of construction services. In  
22 2001, SWG had total assets of \$2.3 billion, generated revenues of \$1.4 billion and earned  
23 a net income of \$37 million. SWG's common stock is traded on the New York Stock  
24 Exchange ("NYSE") under the symbol SWX.

**Black Mountain Gas Company Description**

**Q. Please provide a brief description of BMG.**

A. BMG is a wholly owned subsidiary of Xcel Energy, Inc. ("Xcel"), providing natural gas distribution service and underground propane distribution service to approximately 8,610 customers in Arizona. BMG's Cave Creek division serves approximately 7,260 natural gas customers in areas in and around Cave Creek, Carefree, Phoenix, and Scottsdale. Its Page division serves approximately 1,350 customers in the city of Page through underground distribution of propane vapor. In 2001, BMG had total assets of \$23.5 million, generated revenues of \$9.0 million and earned a net income of \$1.0 million.

**Xcel Energy, Inc. Description**

Xcel, a Minnesota corporation, is a registered holding company which owns six utility subsidiaries that serve electric and natural gas customers in 12 states including Arizona, Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Xcel also owns or has an interest in a number of nonregulated businesses, the largest of which is NRG Energy, Inc. ("NRG"), a publicly traded independent power producer. In 2001, Xcel had total assets of \$28.7 billion, generated revenues of \$15.0 billion and earned a net income of \$790 million. Xcel's common stock is traded on the NYSE under the symbol XEL.

**The Proposed Transaction**

**Q. Please describe the proposed acquisition.**

A. Under the terms of the agreement ("Agreement") between SWG and BMG's parent, Xcel, SWG will purchase all the common shares of BMG. The filing contemplates that within twelve months of the close of the stock sale, BMG's assets and certificate of convenience

1 and necessity ("CC&N") will be transferred to SWG, and BMG will be dissolved as a  
2 corporation.

3  
4 **Q. Why is SWG requesting Commission approval of its acquisition of BMG?**

5 A. According to Arizona Revised Statute ("A.R.S.") § 40-285(D), "A public service  
6 corporation shall not purchase, acquire, take or hold any part of the capital stock of any  
7 other public service corporation organized or existing under the laws of this state without  
8 a permit from the Commission."

9  
10 For a period of time (not more than twelve months) after the purchase of BMG's stock by  
11 SWG, BMG will exist as a wholly owned subsidiary of SWG. BMG will then transfer its  
12 assets and CC&N to SWG. Asset transfers are subject to Commission jurisdiction  
13 pursuant to A.R.S. § 40-285(A), which says, "A public service corporation shall not sell,  
14 lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its  
15 ... system necessary or useful in the performance of its duties to the public, or any  
16 franchise or permit or any right thereunder, nor shall such corporation merge such system  
17 or any part thereof with any other public service corporation without first having secured  
18 from the commission an order authorizing it so to do." Because BMG will exist as a  
19 wholly owned subsidiary of SWG for a period of time, this may constitute the  
20 reorganization of a public utility holding company as defined in Arizona Administrative  
21 Code ("A.A.C.") R14-2-801. Therefore, Staff believes that Commission approval under,  
22 or waiver of, the Public Utility Holding Companies and Affiliated Interests rules  
23 ("affiliated interests rules") is also required.

24  
25 **Q. Please summarize the various approvals and/or relief being sought by SWG.**

1 A. SWG is seeking the following approvals and/or relief in connection with its acquisition of  
2 Black Mountian:

- 3 1. Approval of SWG's acquisition of BMG's common stock pursuant to A.R.S. §  
4 40-285(D).
- 5 2. Approval of the transfer of the assets and CC&N of BMG to SWG pursuant to  
6 A.R.S. § 40-285(A) and A.R.S. § 40-281.<sup>1</sup>
- 7 3. Approval of the reorganization of a public utility holding company pursuant to  
8 A.A.C. R14-2-801 et seq., or alternatively, a waiver of A.A.C. R14-2-801 et  
9 seq.

10  
11 **Q. What are SWG's long-term plans for BMG?**

12 A. According to the filing, SWG plans to sell all of BMG's propane facilities located in Page,  
13 Arizona and dissolve BMG as a corporate entity within twelve months of the close of this  
14 transaction. SWG plans to absorb (or incorporate) BMG's current Cave Creek division's  
15 natural gas operations as part of the Southwest Gas Corporation. Both are local natural  
16 gas distribution operations.

17  
18 **Q. Has SWG solicited any prospective buyers for the Page division?**

19 A. No. SWG is restricted by the agreement from soliciting any prospective buyers for the  
20 Page propane operations prior to the close of the transaction. However, an initiative  
21 which would have given the city of Page permission to purchase these assets appeared on  
22 the City of Page's November 5<sup>th</sup> ballot. According to the November 6, 2002, edition of  
23 the Lake Powell Chronicle, the initiative failed 45 percent to 55 percent. Staff is currently  
24 unaware of any other parties interested in acquiring the Page division.

25  


---

<sup>1</sup> A.R.S. § 40-281 refers to the "extension" of plant, service, or system by a public service corporation.

1 Q. What is the purchase price for BMG's Stock?


2 A. 

6 Q. What is the book value of the assets to be sold to SWG?

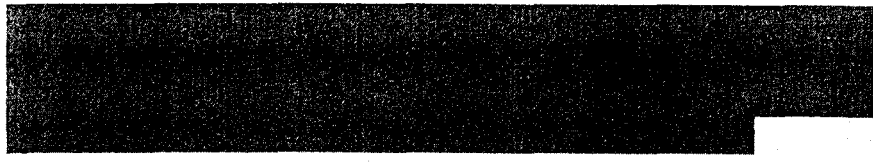
8 A. According to SWG's responses to data requests, the net book value of the assets to be sold  
9 to SWG is  as of December 31, 2001.

11 Q. What is the size of the expected acquisition adjustment related to the acquisition?

12 A. In responding to RUCO data request RUCO 1-2(B), SWG did not provide an estimate of  
13 the expected acquisition adjustment. Instead, SWG stated the following with regard to the  
14 premium paid:

15 

24 SWG further stated in response to RUCO 1-2(C):

25 

30 I will address the acquisition adjustment and its effects again later in this testimony.

<sup>2</sup> Please note that this report contains information that SWG has classified "Confidential" under the terms of a Protective Agreement that SWG and Staff entered into and docketed on August 23<sup>rd</sup>, 2002. Such currently considered "Confidential" information has been redacted in the docketed version of this report and appears in the unredacted version in italics.

1  
2 **Q. How does SWG plan to finance the purchase?**

3 A. SWG has stated that it will use its available cash for the acquisition of BMG. According  
4 to its December 31, 2001, form 10-K on file with the SEC, SWG had cash and cash  
5 equivalents of \$32.5 million.  
6

7 **FINANCIAL ANALYSIS**

8 **SWG's Financial Capability**

9 **Q. Why is it necessary to examine SWG's financial capability?**

10 A. SWG's financial capability should be examined and compared to that of BMG's current  
11 parent, Xcel. If SWG is not capable of providing at least the same level of financial  
12 support as that currently provided by Xcel, then the acquisition may not be in the public  
13 interest. The Commission should find SWG to be a fit and proper entity financially, to  
14 acquire BMG's CC&N before authorizing the sale. SWG's financial capability is an  
15 integral part of that determination.  
16

17 **Q. How does the financial community view SWG?**

18 A. Generally, the financial community regards SWG as a fast-growing utility that keeps pace  
19 with its cash requirements through regular requests for rate relief. The September 20,  
20 2002, edition of The Value Line Investment Survey ("Value Line") stated the following:  
21

22 The company's earnings are benefiting from rate relief. Rate  
23 increases in Arizona and Nevada added about \$10 million to  
24 second-quarter operating margin, which led to a historically  
25 normal \$0.35 share loss. Strong customer growth, which is  
26 averaging about 4% annually, added an additional \$5 million to  
27 operating margin. But this was essentially offset by the effects of  
28 extremely warm weather in April. Also, though expenses are  
29 tightening up, [SWG] continues to tread water when it comes to  
30 funding the rapid pace of its expansion. To that end, a pending  
31 rate case in California appears pivotal to earnings growth. [SWG]

1 is seeking \$23.5 million over 5 years to recover costs associated  
2 with customer growth and pipeline replacement. The California  
3 Public Utility Commission is expected to announce a ruling by the  
4 end of the year, with rate relief possibly becoming effective in  
5 2003.

6 Value Line ranks SWG's financial strength at "B". Financial strength is a relative  
7 measure of the financial strength of the 1,700-plus companies reviewed by Value Line.  
8 The relative ratings range from "A++" (strongest) down to "C" (weakest) in nine steps.  
9

10 **Q. How does Value Line rank BMG's current parent Xcel?**

11 A. In recent months, Value Line has lowered Xcel's financial strength rating two notches  
12 from "B+" to "C++". This lowering was mainly due to cash problems caused by its  
13 unregulated subsidiary NRG, which like many power-marketing companies has faced  
14 severe pressures due to low power prices and a heavy debt burden. In its August and  
15 November reports, Value Line recommends that its subscribers avoid purchasing Xcel's  
16 stock.  
17

18 As of the date this testimony was filed, Xcel cut its quarterly dividend in half, wrote off its  
19 \$2.9 billion investment in NRG, and received a waiver from the SEC allowing its equity  
20 ratio to fall below 30 percent of total capitalization. However, in spite of the financial  
21 problems caused by its unregulated activities, Value Line states in its November report  
22 that Xcel's utility operations currently remain healthy, generating more than enough cash  
23 to cover their capital spending needs.  
24

25 **Market Risk Comparison**

26 **Q. Is SWG riskier than Xcel in terms of market risk?**

1 A. Yes. Market risk is commonly measured by the capital asset pricing model beta.<sup>3</sup> The  
2 higher the beta, the higher the risk of the company's stock, and all other things held equal,  
3 the higher its cost of equity. According to the November 29<sup>th</sup>, 2002, edition of Value  
4 Line, Xcel's beta is .60. SWG's beta is .70. Therefore, according to standard corporate  
5 finance principles, BMG will be acquired by a company whose common equity is riskier  
6 than BMG's current parent in terms of market risk.

7  
8 **Financial Impact on BMG**

9 **Q. What financial effect does Staff anticipate the acquisition will have on BMG in the**  
10 **short term?**

11 A. Staff anticipates that the acquisition will have little to no financial effect on BMG in the  
12 short term. However, if Xcel's financial strength and ultimately its bond rating were to  
13 continue to deteriorate in the near term, this could have negative implications for BMG if  
14 it were to remain an Xcel subsidiary.

15  
16 Both Moody's Investors Service ("Moody's") and Standard and Poor's ("S&P") rank  
17 SWG's and Xcel's debt as adequate/medium grade. On September 5, 2002, Moody's  
18 lowered Xcel's corporate debt rating one notch, from Baa2 to Baa3, with an outlook for  
19 possible further downgrades. S&P ranks Xcel one notch higher than SWG, and SWG  
20 remains on "negative outlook" due to high leverage, lagging regulatory recovery, and  
21 elevated capital expenditures due to customer growth (see Table 1).  
22

---

<sup>3</sup> Market risk, also known as systematic risk, is the risk related to economy-wide perils that threaten all businesses such as changes in interest rates, inflation, and general business cycles. Market risk cannot be avoided regardless of how diversified a portfolio is and it is the only type of risk that affects the cost of equity.



Table 1<sup>4</sup>

	SWG	Xcel
Moody's	Baa2	Baa3 (neg outlook)
Standard & Poors	BBB- (neg outlook)	BBB

Based on the above analysis, BMG may not see a substantial increase in its access to capital due to its acquisition by SWG. However, the proposed transaction would prevent BMG from being exposed to the possible worsening financial condition of Xcel in the near term.

**Q. Is Staff able to quantify the long-term financial effect the acquisition will have on BMG?**

A. No. The long-term financial effect the acquisition will have on BMG is uncertain because the risk profiles of utility holding companies are ever-changing. Under SWG, BMG will be part of a utility whose regulated operations accounted for 85 percent of its revenues in 2001. In contrast, Xcel's regulated utility operations accounted for only 66 percent of total revenues in 2001. Xcel's recent write off of NRG, however, may signal a long-term shift back to core regulated utility operations.

**Q. What are SWG's long-term diversification plans?**

A. According to a response to a Staff data request, SWG's business strategy "is to focus on its local natural gas distribution business and evaluate and pursue sensible strategic opportunities as they may arise."

**Q. What is Staff's overall assessment of the financial impact of the acquisition on BMG?**

<sup>4</sup> See Exhibit JMR-1 for descriptions of bond ratings.

1 A. SWG has at least the same level of financial capability as Xcel. While BMG may not see  
2 any significant short-term financial benefits resulting from the acquisition, under SWG it  
3 will be shielded from the near-term company-specific risks that Xcel currently faces. In  
4 terms of market risk, SWG is riskier than Xcel.

5  
6 **The Acquisition Adjustment**

7 **Q. How does SWG propose to treat the acquisition adjustment in this case?**

8 A. In response to RUCO data request RUCO 1-2(D), SWG stated:

9  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21  
22 **Q. Do you agree** [REDACTED]

23 [REDACTED]  
24 [REDACTED] ?

25 A. Yes. However, I also believe that because [REDACTED]

26 [REDACTED] it is appropriate to address the  
27 ratemaking treatment of the acquisition adjustment in this proceeding. Addressing any  
28 potential ratemaking treatment of the acquisition adjustment in this proceeding benefits  
29 the Company and ratepayers by reducing uncertainty regarding future rates.  
30

1     **Q.     What is Staff's recommendation regarding any future ratemaking treatment of the**  
2     **acquisition adjustment?**

3     A.     Staff recommends a condition that prohibits SWG from seeking recovery of any  
4     acquisition adjustment. The amount to which a utility is entitled to a fair return is the cost  
5     incurred for the public benefit. The public benefit is not tied to the amount paid. The cost  
6     incurred by the first utility to devote plant to public service is the cost known to benefit the  
7     public. Further, the proposed acquisition does not involve a severely distressed company  
8     being acquired for the sole purpose of improving such things as service and safety for the  
9     public benefit.

10  
11     **Access to Information**

12     **Q.     What does Staff conclude about its ability to obtain information from SWG versus**  
13     **BMG/Xcel?**

14     A.     Staff concludes that there will likely be no change in its access to information from SWG  
15     versus BMG/Xcel. While much of the information requested from BMG in this and in  
16     recent dockets was provided by Xcel corporate personnel located in Minnesota, Staff has  
17     experienced few difficulties in obtaining such information. Likewise, with the exception  
18     of receiving late responses to some data requests in this docket, Staff has experienced few  
19     difficulties in obtaining information from SWG at the local and corporate levels.

20  
21     **CONSUMER SERVICES ANALYSIS**

22     **Q.     Has Staff reviewed the complaint history of SWG versus BMG/Xcel?**

23     A.     Yes. Staff's Consumer Services section provided information detailing the complaint  
24     history of SWG and BMG while under Xcel, from 2000 through the filing of this  
25     testimony. According to the data, the number of complaints per 10,000 customers for this  
26     approximately three-year period is one for SWG and eight for BMG.

**CONCLUSIONS AND RECOMENDATIONS**

**Q. What is Staff's function regarding its decision whether to recommend approval SWG's acquisition of BMG?**

A. Staff believes that the Commission should find any such acquisition to be in the public interest before approving an application. In examining the question of "public interest," Staff believes the Commission should look for public interest in the acquisition of the stock, the subsequent transfer of assets, the transfer of the CC&N, and in any direct consumer benefits. In Staff's opinion, the acquisition, as proposed, offers no obvious and significant immediate consumer benefit.

**Q. What is Staff's conclusion whether the proposed acquisition is in the public interest?**

A. Staff concludes that SWG's proposed acquisition of BMG's stock and the subsequent transfer of the assets and CC&N of BMG to SWG as proposed, is not obviously in the public interest without conditions. The transaction could be consistent with the public interest provided the Commission adopts the conditions set forth below; in particular condition 5, which provides an obvious and significant direct benefit to ratepayers. Furthermore, Staff concludes that when BMG is dissolved as a corporate entity, SWG would be a fit and proper entity to receive the CC&N previously granted to BMG.

**Q. What is staff's recommendation regarding the affiliated interests rules?**

A. Staff recommends that, with the adoption of Staff's conditions, the Commission waive compliance with the affiliated interests rules in this case. A.A.C. R14-2-806(A) reads, "The Commission may waive compliance with any of the provisions of this Article upon a finding that such waiver is in the public interest." With conditions, Staff believes a waiver is in the public interest. SWG represents that BMG will be dissolved within twelve

1 months of the stock purchase (and its operations will be merged into SWG's). Therefore,  
2 the reorganization of a public utility holding company is incidental in the overall  
3 transaction.

4  
5 **Q. What are Staff's recommendations?**

6 A. Staff recommends approving SWG's proposed acquisition of BMG's stock and  
7 subsequent transfer of BMG's assets and CC&N to SWG, and waiving compliance with  
8 the affiliated interests rules, subject to the following conditions:

- 9
- 10 1. SWG shall not seek future rate recovery of any acquisition adjustment related to the  
11 acquisition.
  - 12
  - 13 2. SWG shall not seek recovery of any costs associated with the acquisition, including  
14 internal corporate costs, in any future Arizona rate proceeding.
  - 15
  - 16 3. SWG shall not allow the quality of service in either the current SWG or BMG service  
17 territories to diminish as a result of the acquisition. The number of service complaints  
18 should not increase, the response time to service complaints should not increase, and  
19 service interruptions should not increase.
  - 20
  - 21 4. SWG shall not use any utility plant or other property, that is used or necessary for the  
22 provision of utility service, for any unregulated activity unless SWG maintains  
23 appropriate books and records of account detailing the nature of such unregulated  
24 activity and providing appropriate allocations between activities relating to SWG's  
25 provision of utility service and the unregulated activity. SWG's books and records  
26 concerning all unregulated activities shall be subject to the Commission's review and

1 shall be made available in the Phoenix metropolitan area or, at the Commission's  
2 request, where the records are maintained, on ten days notice.

3  
4 5. BMG shall dissolve as a corporate entity on or before July 1, 2004. At the completion  
5 of the dissolution, BMG shall file a notice within this docket attesting to the specific  
6 date that the BMG dissolution was completed (herein referred to as the "noticed date").  
7 Upon the noticed date of dissolution, the transfer of BMG's CC&N to SWG shall be  
8 deemed effective. As well, SWG's authorized natural gas rates and charges in their  
9 entirety shall be deemed the authorized rates and charges for Cave Creek division  
10 customers' effective the noticed date of BMG's dissolution. If BMG fails to complete  
11 dissolution by July 1, 2004, as discussed above, BMG shall file a sufficient rate  
12 application with the Arizona Corporation Commission on or before July 1, 2004.  
13 Please note that this condition shall not limit Staff's ability to initiate a rate case at any  
14 time. Furthermore, in no case shall the currently authorized BMG rates and charges  
15 remain in effect beyond July 1, 2004, without BMG initiating a sufficient rate  
16 application with the Commission.

17  
18 6. The Cave Creek Division PGA mechanism shall be merged with Southwest's PGA  
19 mechanism on the date of Black Mountain's completed dissolution.

20  
21 7. If SWG fails to sell BMG's Page Propane Division at or prior to the perfected  
22 dissolution of BMG, SWG shall take all appropriate and timely steps to ensure rates  
23 and charges are in place for the current BMG propane customers, such as: SWG filing  
24 a request to charge BMG's existing rates, or SWG filing a report amending SWG's  
25 filing in this case clarifying that BMG as a corporate entity would remain intact for the

1 sole purpose of providing the same propane service as BMG's Page Division currently  
2 provides in its propane operations.

3  
4 8. If SWG fails to file for Commission approval of the sale of BMG's Page Division  
5 within 18 months of the Commission's approval of SWG's acquisition of BMG, the  
6 Page Division should within 19 months of a decision in this case make a filing for  
7 Commission approval to begin offering the Page Division propane customers service  
8 options that are currently available to SWG's customers. Such services include, but  
9 are not limited to, a low income discount tariff for residential customers, a balanced  
10 payment plan option, ~~an online bill payment option, and applicable demand-side~~  
11 management programs.

12  
13 9. SWG shall continue to maintain the existing emergency isolation valves in all current  
14 BMG service areas.

15  
16 10. During the 2002 Code Compliance Audit, BMG stated that it was installing additional  
17 emergency isolation valves (approximately 34). If at the time of the Stock transfer  
18 from Xcel to SWG, BMG has not completed the installation of all currently planned  
19 valves for the Cave Creek Division, SWG shall complete the installation of those said  
20 valves no later than May 1, 2003.

21  
22 11. SWG shall not allow the acquisition to diminish staffing that would result in service  
23 and/or safety degradation in either the current SWG or BMG service territories.

24  
25 12. SWG shall continue to maintain fully operational local field offices in the cities of  
26 Cave Creek and Page, as appropriate, to maintain the quality of service.

1  
2 13. SWG shall continue BMG's current policy of not using contract personnel for the  
3 performance of underground pipeline locating.  
4

5 14. SWG or BMG shall complete all mapping of the BMG pipeline system no later than  
6 May 1, 2003, as agreed to by BMG during its 2002 Code Compliance Audit.  
7

8 **Q. Which Staff witnesses are sponsoring these conditions?**

9 A. I am sponsoring conditions 1 through 4. Mr. Robert G. Gray is sponsoring conditions 5  
10 through 8. Mr. Robert Miller is sponsoring conditions 9 through 14.  
11

12 **Q. How could SWG have demonstrated an obvious and significant immediate consumer**  
13 **benefit in its application?**

14 A. SWG could have proposed applying SWG's existing tariffs to BMG's Cave Creek  
15 division upon the stock transfer. The rates issue is further discussed in the direct  
16 testimony of Robert G. Gray.  
17

18 **Q. Does this conclude your direct testimony?**

19 A. Yes, it does.



### Standard & Poors Corporation Bond Ratings

AAA	Highest
AA	Very strong capacity to pay interest and repay principal.
A	Strong capacity to pay interest and repay principal.
BBB	Adequate capacity to pay interest and repay principal.
BB	Faces major ongoing uncertainties...which could lead to inadequate capacity to meet timely interest and principal payments.
B	Vulnerability to default but currently has the capacity to meet interest payments and principal repayments.
CCC	Currently identifiable vulnerability to default.
CC	Subordinated to CCC debt.
C	Subordinated to CCC- - debt.
CI	Income bonds on which no interest is being paid.
D	In default.

Plus (+)/Minus (-) The ratings from 'AA' to 'B' may be modified by the addition of a plus or minus sign to show relative standing within the major ratings categories.

### Moody's Investors Service, Inc. Bond Ratings

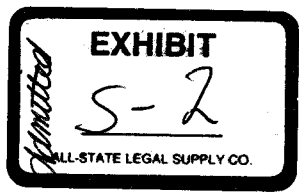
Aaa	Judged to be of the best quality.
Aa	Judged to be of high quality by all standards.
A	Possess many favorable investment attributes and are to be considered as upper medium grade obligations.
Baa	Considered as medium grade obligations.
Ba	Judged to have speculative elements.
B	Generally lack characteristics of the desirable investment.
Caa	Are of poor standing.
Ca	Speculative in a high degree.
C	Lowest rated class of bonds.

Moody's applies numerical modifiers 1, 2, and 3 in each generic rating classification from Aa through B. The modifier 1 indicates that the company ranks in the higher end of its generic rating category.

### Fitch Investors Service, Inc. Bond Ratings

AAA	Bonds considered to be investment grade and of the highest quality.
AA	Bonds considered to be investment grade and of very high credit quality.
A	Bonds considered to be investment grade and of high credit quality.
BBB	Bonds considered to be investment grade and of satisfactory credit quality.
BB	Bonds are considered speculative.
B	Bonds are considered highly speculative.
CCC	Bonds have certain identifiable characteristics which, if not remedied, may lead to default.
CC	Bonds are minimally protected.
C	Bonds are in imminent default.
DDD, DD, and D	Bonds are in default on interest and/or principal payments.

Plus (+)/Minus (-) Plus and minus signs are used with a rating symbol to indicate the relative position of a credit within the rating category.



BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

IN THE MATTER OF THE APPLICATION OF )  
SOUTHWEST GAS COMPANY FOR )  
APPROVAL OF ACQUISITION PLAN AND, IF )  
APPROPRIATE, WAIVER OF SELECTED )  
PROVISIONS OF THE AFFILIATE RULES )  
\_\_\_\_\_ )

DOCKET NO. G-01551A-02-0425

DIRECT  
TESTIMONY  
OF  
ROBERT MILLER  
UTILITIES CONSULTANT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

DECEMBER 20, 2002

## TABLE OF CONTENTS

	<u>Page</u>
Introduction.....	1
Analysis.....	1
Conditions for approval .....	3

## EXHIBITS

### Exhibit 1

Correspondence Regarding Black Mountain Gas Company 2002 Code Compliance Audit

**EXECUTIVE SUMMARY**  
**SOUTHWEST GAS CORPORATION**  
**DOCKET NO. G-01551A-02-0425**

Southwest Gas Corporation ("SWG") is seeking approval to acquire 100 percent of the stock of Black Mountain Gas Company ("BMG"). SWG also requests authority to subsequently transfer the assets and Certificate of Convenience and Necessity ("CC&N") to BMG to SWG.

Mr. Miller's direct testimony addresses the concerns of the Arizona Corporation Commission's ("Commission") Office of Pipeline Safety ("OPS" or "Pipeline Safety") relating to SWG's acquisition of BMG. Specifically, OPS is concerned with the use of contract locators and BMG's 2002 Code Compliance audit.

Mr. Miller recommends six conditions on the approval of SWG's application.

1     **INTRODUCTION**

2     **Q.     Please state your name and business address?**

3     A.     My name is Robert Miller. My business address is 2200 North Central Avenue, Phoenix,  
4             Arizona 85005.

5  
6     **Q.     What is your current occupation?**

7     A.     I am a Utilities Consultant in the Utilities Division's Office of Pipeline Safety ("Pipeline  
8             Safety"). I have been employed by the Arizona Corporation Commission ("Commission")  
9             since 1996.

10  
11    **Q.     Have you previously testified?**

12    A.     Yes. I have previously testified on behalf of Pipeline Safety in hearings.  
13

14    **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

15    A.     The purpose of my testimony in this proceeding is to express and discuss the concerns of  
16             the Utilities Division's Office of Pipeline Safety staff relating to the acquisition of Black  
17             Mountain Gas Company ("BMG") by Southwest Gas Corporation ("SWG"). I also  
18             recommend six conditions for approval of SWG's application.  
19

20    **ANALYSIS**

21    **Q.     Does Pipeline Safety have any concerns with SWG's operations that would effect this**  
22             **merger?**

23    A.     Yes. It is SWG's policy to utilize contractors to locate most of its facilities. In the interest  
24             of public safety BMG has made the decision not to use contract locators. Based on the  
25             fact that the current BMG mapping is incomplete, as noted during the 2002 code  
26             compliance audit (see Exhibit 1, page 12). Pipeline Safety agrees with BMG's decision to

1 use full time regular employees for locate duties. These local employees are far more  
2 familiar with the BMG distribution system than an outside contract service could be. Until  
3 such time that BMG mapping has been completed and SWG is able to demonstrate the  
4 accuracy of these maps, Pipeline Safety would request that SWG continue to follow  
5 BMG's policy of not using contract personnel to locate underground gas pipelines within  
6 the BMG service area.

7  
8 **Q. Does Pipeline Safety have any concerns with the current operations of BMG?**

9 A. Yes. During BMG's 2002 Code Compliance Audit ("2002 Audit"), several probable non-  
10 compliance items were noted (see Exhibit 1, pages 1-6).

11  
12 **Q. Have these items been corrected by BMG?**

13 A. BMG has agreed in writing to make corrections to its procedures and to update and correct  
14 all mapping of its pipeline system. (See Exhibit 1, pages 7-16) The mapping is to be  
15 completed no later than May 1, 2003. SWG should complete all the items as stated in the  
16 Audit response provided to Pipeline Safety by BMG within the time frames as agreed  
17 upon by BMG and Pipeline Safety. (See Exhibit 1, page 17)

18  
19 **Q. Does Pipeline Safety have any other issues with BMG?**

20 A. Yes. During the 2002 Audit, the BMG emergency valve isolation plan was discussed.  
21 BMG stated that it would install additional valves in its system in order to better isolate  
22 and control the flow of gas in order to increase public safety and minimize the impact and  
23 potential risks of a broken or leaking pipeline to its customers. Pipeline Safety agrees  
24 with BMG and supports its efforts to maintain, improve and enhance public safety in its  
25 operation of the gas distribution system. SWG should follow through with BMG's plan to  
26 install these additional valves.

**CONDITIONS FOR APPROVAL**

**Q. What conditions do you propose should the Commission approve SWG's application?**

**A.** I recommend the following conditions:

1. SWG shall continue to maintain the existing emergency isolation valves in all current BMG service areas.
2. During the 2002 Code Compliance Audit, BMG stated that it was installing additional emergency isolation valves (approximately 34). If at the time of the Stock transfer from Xcel to SWG, BMG has not completed the installation of all currently planned valves for the Cave Creek division, SWG shall complete the installation of those said valves no later than May 1, 2003.
3. SWG shall not allow the acquisition to diminish staffing that would result in service and or safety degradation in either the current SWG or BMG service territories.
4. SWG shall continue to maintain fully operational local field offices in the cities of Cave Creek and Page, as appropriate, to maintain the quality of service.
5. SWG shall continue BMG's current policy of not using contract personnel for the performance of underground pipeline locating.
6. SWG or BMG shall complete all mapping of the BMG pipeline system no later than May 1, 2003, as agreed to by BMG during its 2002 Code Compliance Audit.

1

2

Q. Does this conclude your direct testimony?

3

A. Yes, it does.



WILLIAM A. MUNDCELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



EXHIBIT-1 PAGE 1  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

May 9, 2002

Mr. John Reiber  
President / CEO  
Black Mountain Gas Company  
P. O. Box 427  
Cave Creek, Arizona 85327

RE: 2002 CODE COMPLIANCE AUDIT

Dear Mr. Reiber:

The Arizona Corporation Commission's (Commission) Office of Pipeline Safety has the responsibility to enforce the Arizona Revised Statute Section 40-441. The Commission has adopted Title 49, Code of Federal Regulations. Parts 191, 192, 199, 40 and the Arizona Administrative Code R14-5-202 and R14-5-203 as the minimum standards for the transportation of natural and liquefied petroleum gas by pipeline. Black Mountain Gas Company is transporting natural and liquefied petroleum gas and is required to meet these minimum standards.

The Audit was conducted during April, 2002, by Robert Miller of the Commission's Office of Pipeline Safety and consisted of a review of the Operation and Maintenance Plan, Emergency Plan, Anti-Drug and Alcohol Prevention Programs a random review of records and a field inspection of pipeline facilities.

Enclosed are the probable noncompliances noted during this Audit. All probable noncompliances identified shall be applied to the entire pipeline system. Please provide a letter by June 9, 2002, showing compliance where possible or a schedule including dates for compliance.

Thank you for your continued interest in pipeline safety. Should you have any questions regarding this matter, you may contact Corky Hanson at (602) 542-3316.

Sincerely,

A handwritten signature in cursive script that reads "Terry Fronterhouse".

Terry Fronterhouse  
Chief of Pipeline Safety  
Pipeline Safety Section

TF:ss

Enclosures

BLACK MOUNTAIN GAS  
2002 CODE COMPLIANCE AUDIT  
PROBABLE NONCOMPLIANCES

1. NFPA 59 Chapter 1-10.1.3 Sources of Ignition.

Vehicles and other mobile equipment that constitutes a potential ignition source shall be prohibited within 50 feet of containers.

Finding:

Non exempt vehicles are allowed to be parked and or operated within 50 feet of the containers at Wahweap and Grenehaven facilities in Page (see Exhibit No. 1).

2. NFPA 59 Chapter 2-9.2 Loading and Unloading Facilities Spacing.

The filling pipe inlet terminal shall be located at least five feet behind vehicular barriers.

Finding:

Barriers have not been installed at the Wahweap or Grenehaven loading terminals (see Exhibit No. 2).

3. NFPA 59 Chapter 4-3.5 Valves and Accessories.

The connection into which the liquid or vapor is being transferred shall be equipped with a back flow check valve or an emergency shut off valve.

Finding:

At the time of this audit the vapor emergency cut off valve control line was inoperable at the Grenehaven facility (see Exhibit No. 3).

Note:

The cut off valve control line was repaired upon discovery during the audit.

4. Part 192.13 (c) General.

Written procedures shall be maintained and modified as appropriate.

Findings:

- Written leak survey procedures reference ASME G-1.1 for mobile natural gas leak surveys but fails to identify at which speed a mobile leak survey can be conducted (see Exhibit No. 4).
- Written procedures fail to require the use of protective clothing (nomex) in hazardous conditions except blowing gas (see Exhibit No. 5).
- Written boring procedures fail to provide adequate instruction to prevent damage to the pipeline being inserted into the bore (see Exhibit No. 6).

5. Part 192.16 Customer Notification.

Customers shall be notified if the customers buried piping is not maintained by the operator.

Findings:

- Written procedures had not been established at the time of the audit which require the notification of customers.
- Records were not available at the time of the audit demonstrating that customer notification was being conducted in the natural gas division.

6. Part 192.603 (b) General Provisions.

Each operator shall keep records necessary to administer the procedures established.

Findings:

- Training records were not available at the time of the audit to demonstrate that contract personnel, which are allowed to inspect their own work, had been trained to the operators manual of operations and maintenance (see exhibit No. 7).
- Regulator station construction records fail to identify which welding procedures were used and which welder performed the welding (see Exhibit No. 8).
- Training records were not available to demonstrate that all personnel were properly trained in the use of the company provided self-contained breathing apparatus.

7. Part 192.605 (a) Procedural Manual for Operations, Maintenance, and Emergencies.

A manual of written procedures shall be prepared and followed for conducting operation, maintenance activities and emergency response.

Findings:

- Leak survey personnel failed to follow written procedures, when documenting and classifying underground leaks. Combustible gas instrument (CGI) readings and a sketch showing bar hole location and CGI readings were not recorded following discovery of an underground leak (see Exhibit No. 9).
- Documentation was not available to demonstrate that Cave Creek management personnel had participated in the annual review of the emergency plan.
- The Cave Creek emergency response vehicle failed to have all equipment on board as required by the emergency vehicle inventory list. Emergency vehicle was not equipped with all required squeeze off tools and did not have a constant monitoring CGI on board.

8. Part 192.605 (b) (3) Procedural Manual for Operations, Maintenance, and Emergencies.

Making construction records, maps, and operating history available to appropriate operating personnel.

Finding:

Maps available at the time of the audit and used by locating, survey, construction and emergency response personnel fail to include all main and service lines (see Exhibit No. 10).

9. Part 192.616 Public Education.

Establish a continuing education program to enable customers, the general public, government organizations and excavators to recognize a gas pipeline emergency for the purpose of reporting it to the operator or appropriate public officials.

Finding:

Current public education program does include instruction on how to recognize an emergency for the purpose of reporting it to the operator or appropriate public officials.

10. Part 192.707 (a) Line Markers for Mains and Transmission Lines.

Line markers must be placed and maintained at each crossing of a public road and in Class 1 and Class 2 locations in sufficient numbers to identify the location of the pipeline.

Findings:

- Line markers were not installed at each crossing of a public roadway (see Exhibit No. 11).
- Line markers were not placed over the pipeline in sufficient numbers and spacing to determine the location of the pipeline (see Exhibit No. 11).

11. Part 192.707 (d) Line Markers for Mains and Transmission Lines.

The name and telephone number (including area code) of the operator must be written on each line marker.

Finding:

Area codes on line markers have not been changed to reflect the current area codes in effect at the time of the audit (see Exhibit No. 12).

12. Part 192.721 (b) Distribution Systems: Patrolling.

Mains in places or on structures where physical movement or external loading could cause failure must be patrolled.

Finding:

Patrolling failed to identify missing and or incorrect information on above ground mains installed under road bridges (see Exhibit No. 12).

13. Part 192.725 Test Requirements for Reinstating Service Lines.

Each disconnected service line must be tested in the same manner as a new service line, before being reinstated.

Finding:

Documentation provided during the audit failed to demonstrate that a repaired and reinstated service line had been tested as required (see Exhibit No. 13).

14. Arizona Administrative Code: R-14-5-202 (R).

Leakage survey records shall identify each pipeline surveyed.

Finding:

Leak survey documentation provided failed to adequately identify each area surveyed and each flame ionization (FI) unit and or each CGI used to conduct the leak survey.

Examples:

- Leak survey documentation provided failed to include the serial numbers of each FI and CGI units used to conduct the annual surveys (see Exhibit No. 10).
- Leak survey documentation provided failed to identify each pipeline surveyed. Survey maps fail to include all gas mains and service lines (see Exhibit No. 10).

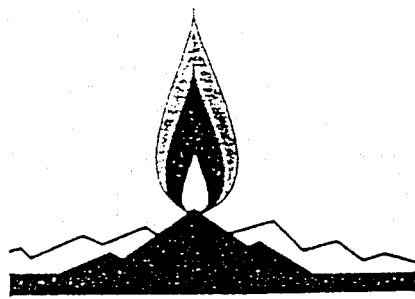
15. Arizona Administrative Code: R-14-5-202 (F).

Any part of a pipeline transporting natural gas or other gas will not be constructed under a building.

Finding:

Buildings over pipelines were identified during the field portion of the audit at the following locations:

- 905 Cathedral Ave. Page, Arizona (see Exhibit No. 14).
- Residence at Elm and Gum Page, Arizona (see Exhibit No. 15).



BLACK MOUNTAIN  
GAS COMPANY

CAVE CREEK ROAD • P.O. BOX 427 • CAVE CREEK, ARIZONA 85327

June 7, 2002

Mr. Terry Fronterhouse  
Chief of Pipeline Safety  
Pipeline Safety Section  
Arizona Corporation Commission

RECEIVED

JUN 10 2002

PIPELINE SAFETY  
ARIZONA CORPORATION COMMISSION

RE: 2002 CODE COMPLIANCE AUDIT

Dear Mr. Fronterhouse,

The following information is provided in response to probable non-compliances noted by your staff following the audit of Black Mountain Gas Company, which was conducted in April of 2002.

1. NFPA 59 Chapter 1-10.1.3 Sources of Ignition.

Vehicles and other mobile equipment that constitutes a potential ignition source shall be prohibited within 50 feet of containers.

Finding:

Non exempt vehicles are allowed to be parked and or operated within 50 feet of the containers at Wahweap and Greenhaven facilities in Page (see Exhibit No. 1).

Response:

Black Mountain Gas will post signs on the fencing at both the Wahweap and Greenhaven facilities which prohibits unauthorized vehicle parking within 50 feet of the facility. Additionally, BMG will work with the landowner to move the entry gate. It is anticipated that the above corrections will be made by August 30, 2002.

2. NFPA 59 Chapter 2-9.2 Loading and Unloading Facilities Spacing.

The filling pipe inlet terminal shall be located at least five feet behind vehicular barriers.

Finding:

Barriers have not been installed at the Wahweap or Greenghavan loading terminals (see Exhibit No. 2)

Response:

Black Mountain Gas will install concrete filled posts as vehicle barriers at the Wahweap and Greenghavan facilities. It is anticipated that the posts will be installed by August 30, 2002.

3. NFPA 59 Chapter 4-3.5 Valves and Accessories.

The connection into which the liquid or vapor is being transferred shall be equipped with a back flow check valve or an emergency shut off valve.

Finding:

At the time of this audit the vapor emergency cut off valve control line was inoperable at the Greenghavan facility (see Exhibit No. 3).

Note:

The cut off valve control line was repaired upon discovery during the audit.

Response:

Black Mountain Gas has repaired the vapor emergency cut off valve control line at the Greenghavan facility. The vapor emergency cutoff valve control lines will be inspected monthly at all bulk storage equipment locations. The monthly inspections will begin in June of 2002.



4. Part 192.13 (c) General.

Written procedures shall be maintained and modified as appropriate.

Findings:

- Written leak survey procedures reference ASME G-11 for mobile natural gas leak surveys but fails to identify at which speed a mobile leak survey can be conducted (see Exhibit No. 4).

Response:

Black Mountain Gas will develop written procedures that identify the speed at which a mobile leak survey can be conducted. The changes will be incorporated into the O & M Manual. The addition to the O & M Manual will be completed by August 5, 2002.

- Written procedures fail to require the use of protective clothing (nomex) in hazardous conditions except blowing gas (see Exhibit No. 5).

Response:

Black Mountain Gas will develop written procedures that identify the need to wear protective clothing in hazardous conditions which include blowing gas or any other time the employee in charge identifies that potential ignition of gas may occur. The changes will be incorporated into the O & M Manual. The addition to the O & M Manual will be completed by August 5, 2002.

- Written boring procedures fail to provide adequate instruction to prevent damage to the pipeline being inserted into the bore (see Exhibit No. 6).

Response:

Black Mountain Gas will develop written procedures that require inspection of the leading edge of any pipe that is inserted through a bore. If damage is identified, the damaged pipe will be removed or abandoned, necessary action taken to eliminate additional damage and a new pipe installed. The changes will be incorporated into the Construction Manual. The addition to the Construction Manual will be completed by August 5, 2002.

5. Part 192.16 Customer Notification.

Customers shall be notified if the customers buried piping is not maintained by the operator

Findings:

- Written procedures had not been established at the time of the audit which require the notification of customers.
- Records were not available at the time of the audit demonstrating that customer notification was being conducted in the natural gas division.

Response:

Black Mountain gas will complete a mailing to all customers of record in the Cave Creek Division that notifies the customer that buried piping downstream of the meter is not maintained by Black Mountain Gas Company. The mailing will be completed by August 30, 2002. Additionally, this notification will be provided to customers when they apply for service with Black Mountain Gas. Documentation that notification was given to a customer by personal delivery or by mailing will be added to the Application for Service.

6. Part 192.603 (b) General Provisions.

Each operator shall keep records necessary to administer the procedures established.

Findings:

- Training records were not available at the time of the audit to demonstrate that contract personnel, which are allowed to inspect their own work, had been trained to the operators manual of operations and maintenance (see exhibit No. 7).

Response:

Following revision of the Black Mountain manuals to incorporate changes identified in this document, training of contract personnel will be completed. Contractor training will be completed by August 30, 2002.

- Regulator station construction records fail to identify which welding procedures were used and which welder performed the welding (see Exhibit No. 8).

Response:

The records identified in Exhibit #8 will be amended to include the welding procedures used and to identify the welder who performed the work. Forms utilized to document work when welding is completed as part of system construction or maintenance will be modified to document the welding procedure used and the welder.

6. Part 192.603 (b) General Provisions. (continued)

Each operator shall keep records necessary to administer the procedures established.  
(continued)

Findings: (continued)

- Training records were not available to demonstrate that all personnel were properly trained in the use of the company provided self-contained breathing apparatus.

Response:

All employees who may be required to use the company provided self-contained breathing apparatus will be re-trained and documentation of the training filed. The training will be completed before August 30, 2002.

7. Part 192.605 (a) Procedural Manual for Operations, Maintenance, and Emergencies.

A manual of written procedures shall be prepared and followed for conducting operation, maintenance activities and emergency response.

Findings:

- Leak survey personnel failed to follow written procedures, when documenting and classifying underground leaks. Combustible gas instrument (CGI) readings and a sketch showing bar hole location and CGI readings were not recorded following discovery of an underground leak (see Exhibit No. 9).

Response:

All employees or contractors who may be involved in leak survey activities will be trained to follow the procedures as documented in the O & M Manual. The training will be completed prior to the start of the 2002 leak survey (July 1, 2002).

- Documentation was not available to demonstrate that Cave Creek management personnel had participated in the annual review of the emergency plan.

Response:

All employees, including management who may be involved with use of the Emergency Plan will complete training. The training will be completed by July 1, 2002.

7. Part 192.605 (a) Procedural Manual for Operations, Maintenance, and Emergencies.  
(continued)

A manual of written procedures shall be prepared and followed for conducting operation, maintenance activities and emergency response. (continued)

Findings: (continued)

- The Cave Creek emergency response vehicle failed to have all equipment on board as required by the emergency vehicle inventory list. Emergency vehicle was not equipped with all required squeeze off tools and did not have a constant monitoring CGI on board.

Response:

Prior to June 28, 2002, provisions will be made to have all equipment on board the Cave Creek emergency response vehicle as required by the emergency vehicle inventory list.

8. Part 192.605 (b) (3) Procedural Manual for Operations, Maintenance, and Emergencies.

Making construction records, maps, and operating history available to appropriate operating personnel.

Finding:

Maps available at the time of the audit and used by locating, survey, construction and emergency response personnel fail to include all main and service lines (see Exhibit No. 10).

Response:

As future leak surveys are conducted, Black Mountain Gas will review and/or modify documents to ensure that the locations of all gas lines are documented as required for use during locating, survey, construction and emergency response activities. The company will ensure that the information necessary is made available to employees completing the above activities. It is anticipated that it may require up to 5 years to complete the review and documentation.

9. Part 192.616 Public Education.

Establish a continuing education program to enable customers, the general public, government organizations and excavators to recognize a gas pipeline emergency for the purpose of reporting it to the operator or appropriate public officials.

Finding:

Current public education program does include instruction on how to recognize an emergency for the purpose of reporting it to the operator or appropriate public officials

Response:

Black Mountain Gas will complete a mailing to all customers of record in the Cave Creek Division that notifies the customer of how to recognize emergency conditions. The mailing will be completed by August 30, 2002. Additionally, this notification will be provided to customers when they apply for service with Black Mountain Gas. Documentation that notification was given to a customer by personal delivery or by mailing will be added to the Application for Service. The general public in the service area will be informed through advertising in local newspapers; to be completed by August 30, 2002.

10. Part 192.707 (a) Line Markers for Mains and Transmission Lines.

Line markers must be placed and maintained at each crossing of a public road and in Class 1 and Class 2 locations in sufficient numbers to identify the location of the pipeline.

Findings:

- Line markers were not installed at each crossing of a public roadway (see Exhibit No. 11).

Response:

A review of the pipeline markers will be made by Black Mountain Gas employees and markers installed as necessary. The inspection will be complete by September 30, 2002.

- Line markers were not placed over the pipeline in sufficient numbers and spacing to determine the location of the pipeline (see Exhibit No. 11)

Response:

A review of the pipeline markers will be made by Black Mountain Gas employees and markers installed as necessary. The inspection will be complete by September 30, 2002.

11. Part 192.707 (d) Line Markers for Mains and Transmission Lines.

The name and telephone number (including area code) of the operator must be written on each line marker.

Finding:

Area codes on line markers have not been changed to reflect the current area codes in effect at the time of the audit (see Exhibit No. 12).

Response:

A review of the pipeline markers will be made by Black Mountain Gas employees and area coded modified as necessary. The inspection will be complete by September 30, 2002.

12. Part 192.721 (b) Distribution Systems: Patrolling.

Mains in places or on structures where physical movement or external loading could cause failure must be patrolled.

Finding:

Patrolling failed to identify missing and or incorrect information on above ground mains installed under road bridges (see Exhibit No. 12).

Response:

A review of the above ground mains installed under road bridges was completed April 18, 2002 and missing information provided or incorrect information corrected.

13. Part 192.725 Test Requirements for Reinstating Service Lines.

Each disconnected service line must be tested in the same manner as a new service line, before being reinstated.

Finding:

Documentation provided during the audit failed to demonstrate that a repaired and reinstated service line had been tested as required (see Exhibit No. 13).

Response:

The service line identified in Exhibit 13 was excavated and air tested on May 3, 2002.

14. Arizona Administrative Code: R-14-5-202 (R).

Leakage survey records shall identify each pipeline surveyed

Finding:

Leak survey documentation provided failed to adequately identify each area surveyed and each flame ionization (FI) unit and or each CGI used to conduct the leak survey.

Examples:

- Leak survey documentation provided failed to include the serial numbers of each FI and CGI units used to conduct the annual surveys (see Exhibit No. 10).
- Leak survey documentation provided failed to identify each pipeline surveyed. Survey maps fail to include all gas mains and service lines (see Exhibit No. 10).

Response:

As future leak surveys are conducted, the leak survey documentation will identify each area surveyed and each flame ionization (FI) unit or CGI used to conduct the survey. Additionally, as future leak surveys are conducted, Black Mountain Gas will review and/or modify documents to ensure that the locations of all gas lines are documented. It is anticipated that up to 5 years to complete the review and documentation.

15. Arizona Administrative Code: R-14-5-202 (F).

Any part of a pipeline transporting natural gas or other gas will not be constructed under a building.

Finding:

Buildings over pipelines were identified during the field portion of the audit at the following locations:

- 905 Cathedral Ave. Page, Arizona (see Exhibit No. 14).
- Residence at Elm and Gum Page, Arizona (see Exhibit No. 15).

Response:

Black Mountain Gas surveyed all sheds/buildings in the Page area and identified two sites in addition to those identified in the audit. The disposition of each of the four sites is as follows:

905 Cathedral – Building has been moved.

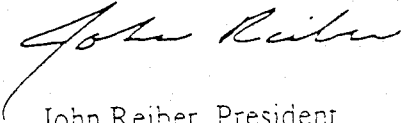
Elm & Gum – Used as storage shed only; not for occupancy

#2 Red Mesa – Main will require cut-off or re-route will be completed by August 30, 2002.

San Fransico & Cameron – Main will be cut-off by August 30, 2002

Should you or your staff have any questions regarding the provided responses, please contact me at (480) 488-3402 X213 or Mr. Saul Carrasco, Gas Operations Manager at (480) 488-3402 X204.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Reiber".

John Reiber, President  
Black Mountain Gas Company

CC: Saul Carrasco  
Gail Robinson  
Mark Nolan  
Ben Sherman



WILLIAM A. WUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



BRIAN C. McNEIL  
EXECUTIVE SECRETARY

## ARIZONA CORPORATION COMMISSION

June 26, 2002

## CERTIFIED MAIL

Mr. John Reiber  
President: CEO  
Black Mountain Gas Company  
P.O. Box 427  
Cave Creek, Arizona 85327

RE: 2002 CODE COMPLIANCE AUDIT

Dear Mr. Reiber:

The Arizona Corporation Commission's Pipeline Safety Section has received your response dated June 7, 2002, in regards to the 2002 Code Compliance Audit. Staff's review finds your response to the 15 probable noncompliance items to be acceptable with the exception of the following item.

Item No. 8, 192.605 (b) (3)

In your response you state that it may take up to five years to complete the mapping. Staff finds this to be an excessive amount of time. Mapping in areas where required leak surveys are scheduled shall be completed prior to a survey being conducted. All remaining mapping shall be completed no later than May 1, 2003.

Thank you for your continued interest in pipeline safety. Should you have any questions regarding this matter, you may contact Corky Hanson at (602) 542-3316.

Sincerely,

A handwritten signature in cursive script that reads "Terry Fronterhouse".

Terry Fronterhouse  
Chief of Pipeline Safety  
Pipeline Safety Section

TFR:m

SOUTHWEST GAS CORPORATION  
ACQUISITION OF BLACK MOUNTAIN GAS COMPANY

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RESIDENTIAL UTILITY CONSUMER OFFICE  
DATA REQUEST RUCO-BLKMTN NO. 2  
(RUCO-BLKMTN-2-1 THROUGH RUCO-BLKMTN-2-4)

DOCKET NO.: G-01551A-02-0425  
COMMISSION: ARIZONA CORPORATION COMMISSION  
DATE OF REQUEST: SEPTEMBER 17, 2002

Request No. RUCO-BLKMTN-2-4:

Acquisition Savings -- Please refer to the Company's response to RUCO's data request No. 1-18. Please explain, in detail, the cost savings to be realized directly from this acquisition plan. Discuss thoroughly each of the savings from: the economy of scale, effective and efficient management techniques, use of a skilled and professional workforce, experienced commodity procurement process, strong corporate financial health and bond ratings, and any other quantifiable savings benefit to the customers of Black Mountain - Cave Creek Division.

Respondent: State Regulatory Affairs

Response:

The discussion of the potential savings was laid out in response to RUCO-BLKMTN-1-18. A general discussion of these potential savings is all that is possible until after closing of the transaction. Southwest is not allowed to interfere in or with Black Mountain's operations, or have discussions with its personnel, other than Black Mountain's president. This prohibits Southwest from performing any truly in-depth and hands-on investigations and/or analyses of Black Mountain's administration or operations, and accurately determining or quantifying potential savings. Southwest believes, based on its preliminary assessments performed in conjunction with its due diligence of the acquisition, that there are potential cost savings in operations, administration, and financing.

For example, Xcel currently has bond ratings below investment grade. Southwest's bond ratings are investment grade. Generally, interest rates are lower for investment grade debt compared to below investment grade debt.

In addition, Southwest has existing centralized administrative operations in Las Vegas and Phoenix. Black Mountain - Cave Creek division should, in general, no

(Continued on page 2)

EXHIBIT

S-3  
Admitted

Response to RUCO-BLKMTN-2-4: (continued)

longer require specific administrative staff or functions for its small customer population. These administrative functions would probably be subsumed in Southwest's existing administration.

Operationally, Southwest has a large, skilled, professional and technical staff in Phoenix. This staff will have the expertise and capability to operate and maintain the Black Mountain - Cave Creek division distribution system. This should, in general, require less employees to be specifically retained for or assigned to Black Mountain's Cave Creek division, allowing existing Central Arizona employees to expand their scope of operations to that service area.

As an example of potential efficiencies, Black Mountain has a customer to employee ratio in Cave Creek of about 240 to 1. The ratio for Southwest's Central Arizona Division at December 31, 2001 was 734 to 1. It should be noted, however, that no layoffs of Black Mountain personnel are planned or anticipated to achieve these efficiencies. Southwest will re-deploy Black Mountain employees interested in employment with Southwest, into open positions in the Central Arizona Division.

Although Southwest cannot accurately provide any specific discussion or quantification of potential cost savings until it has taken control of, and begins operating Black Mountain's Cave Creek Division, it is apparent that such opportunities exist.

960-001

SOUTHWEST GAS CORPORATION  
ACQUISITION OF BLACK MOUNTAIN GAS COMPANY

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RESIDENTIAL UTILITY CONSUMER OFFICE  
DATA REQUEST NO. RUCO-BLKMTN-3  
(RUCO-BLKMTN-3-1 THROUGH RUCO-BLKMTN-3-6)

DOCKET NO.: G-01551A-02-0425  
COMMISSION: ARIZONA CORPORATION COMMISSION  
DATE OF REQUEST: OCTOBER 21, 2002

Request No. RUCO-BLKMTN-3-1:

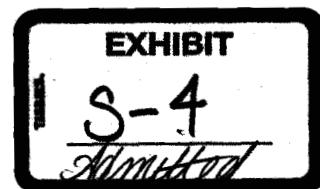
Acquisition Costs - Please refer to the Company's application, explicitly Section 3.1 (Purchase Price) and Schedule 4.5 (Financial Statements of Black Mountain), regarding the difference in the price SWG is willing to pay and the total asset value of BMG. Please provide the following information:

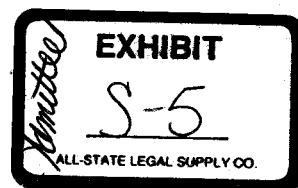
- a. Please explain the reasonableness of paying more than the total asset value for BMG.

Respondent: Accounting

Response:

There are many factors that go into valuing a business, including both financial and non-financial considerations. Financial factors include book value, forecasted cash flows, earnings before interest, taxes and depreciation (EBITDA), residual value, acquisition cost per customer, synergies, etc. Non-financial considerations include proximity to service territory, condition of system, experience of work force, customer list, customer usage, strategic fit, growth potential, etc. Taking all of these factors into consideration, Southwest computed a value that it was willing to initially bid for BMG (approximately 140% of book). Southwest negotiated a final purchase price with Xcel that resulted in the two parties reaching an agreement to consummate the transaction. The price was agreed upon by the parties; one as a willing seller, and one as a willing buyer, and that price was approximately the value Southwest had computed. In this transaction, a book value premium resulted.





BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL

Chairman

JIM IRVIN

Commissioner

MARC SPITZER

Commissioner

IN THE MATTER OF THE APPLICATION OF )  
SOUTHWEST GAS CORPORATION - FILING )  
FOR APPROVAL OF ACQUISITION PLAN )  
AND, WAIVER OF SELECTED PROVISIONS )  
OF THE AFFILIATE RULES )  
\_\_\_\_\_ )

DOCKET NO. G-01551A-02-0425

DIRECT

TESTIMONY

OF

ROBERT G. GRAY

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

DECEMBER 20, 2002

## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION .....	1
CAVE CREEK DIVISION.....	1
IMPACT OF ACQUISITION ON CUSTOMER RATES .....	1
PURCHASED GAS ADJUSTOR .....	10
OTHER RATES/SERVICES.....	12
GAS SUPPLY PROCUREMENT.....	12
PAGE DIVISION .....	15
IMPACT OF ACQUISITION ON CUSTOMER RATES, PURCHASED GAS ADJUSTOR, AND OTHER RATES/SERVICES .....	15
SUMMARY .....	17

## SCHEDULES

Resume of Robert G. Gray.....	RGG-1
Residential Utility Consumer Office Data Request BLKMTN-1-13 .....	RGG-2
Comparison of Black Mountain Gas Cave Creek Rates and Southwest Gas Rates .....	RGG-3
List of Service Charges.....	RGG-4

**EXECUTIVE SUMMARY  
SOUTHWEST GAS CORPORATION  
DOCKET NO. G-01551A-02-0425**

The following recommendations were prepared in response to Southwest Gas Corporation's ("SWG" and/or "Southwest") Application requesting approval of SWG's proposed acquisition of Black Mountain Gas Company ("BMG" and/or "Black Mountain"). Staff's recommendations are as follows for the Cave Creek Division:

1. BMG shall dissolve as a corporate entity on or before July 1, 2004. At the completion of the dissolution, BMG shall file a notice within this docket attesting to the specific date that the BMG dissolution was completed (herein referred to as the "noticed date").

Upon the noticed date of dissolution, the transfer of BMG's CC&N to SWG shall be deemed effective. As well, SWG's authorized natural gas rates and charges in their entirety shall be deemed the authorized rates and charges for Cave Creek Division customers' effective the noticed date of BMG's dissolution.

If BMG fails to complete dissolution by July 1, 2004, as discussed in above, BMG shall file a sufficient rate application with the Arizona Corporation Commission ("Commission" or "ACC") on or before July 1, 2004. Please note, this condition shall not limit Staff's ability to initiate a rate case at anytime.

Furthermore, in no case shall the currently authorized BMG rates and charges remain in effect beyond July 1, 2004, without BMG initiating a sufficient rate application with the Commission.

2. The Cave Creek Division PGA mechanism shall be merged with Southwest's PGA mechanism on the date of Black Mountain's completed dissolution.

Staff's recommendations are as follows for the Page Division:

1. If SWG fails to sell BMG's Page Propane Division at or prior to the noticed date of BMG's dissolution, SWG shall take all appropriate and timely steps to ensure rates and charges are in place for the current BMG propane customers, such as: SWG filing a request to charge BMG's existing rates, or SWG filing a report amending SWG's filing in this case clarifying that BMG as a corporate entity would remain intact for the sole purpose of providing the same propane service as BMG's Page Division currently provides in its propane operations.

2. If SWG fails to file for Commission approval of the sale of BMG's Page Division within 18 months of the Commission's approval of SWG's acquisition of BMG, the Page Division should within 19 months of a decision in this case make a filing for Commission approval to begin offering the Page Division propane customers service options that are currently available to SWG's customers. Such services include, but are not limited to, a low income discount tariff for residential customers, a balanced payment plan option, an online bill payment option, and applicable demand-side management programs.

1     **INTRODUCTION**

2     **Q.     Please state your name and business address.**

3     A.     My name is Robert Gray. My business address is 1200 West Washington, Phoenix,  
4             Arizona 85007.

5  
6     **Q.     By whom are you employed and in what capacity?**

7     A.     I am employed by the Utilities Division of the Arizona Corporation Commission  
8             ("Commission") as a Senior Economist. My duties include the evaluation of natural gas  
9             and electric industry issues and formulation of Staff recommendations to the Commission.  
10            A copy of my resume is provided in Exhibit RG-1.

11  
12    **Q.     As part of your employment responsibilities, were you assigned to review matters**  
13            **contained in Docket No. G-01551A-02-0425?**

14    A.     Yes.

15  
16    **Q.     What is the purpose of your testimony?**

17    A.     My testimony will present the Utilities Division Staff's ("Staff") position related to the  
18             acquisition of Black Mountain Gas ("Black Mountain") by Southwest Gas ("Southwest")  
19             with regard to the rates to be paid by current Black Mountain customers as a result of the  
20             acquisition. purchased gas adjustor issues, gas procurement issues, and other  
21             rates/services.

22  
23    **CAVE CREEK DIVISION**

24    **IMPACT OF ACQUISITION ON CUSTOMER RATES**

25    **Q.     Please describe Black Mountain's Cave Creek Division.**

26    A.     The Cave Creek Division is located in the northeastern section of the Phoenix



1 metropolitan area and is served with natural gas. As of the monthly Purchased Gas  
2 Adjustor ("PGA") report filed at the end of October, 2002, the Cave Creek Division serves  
3 7,560 residential customers and 211 commercial customers, with sales of 6,179,732  
4 therms from October 2001 through September 2002. The Cave Creek Division receives  
5 its natural gas supplies from two sources, Southwest (through Southwest's Schedule G-95)  
6 and the El Paso Natural Gas Company ("El Paso") pipeline system under Black  
7 Mountain's FT-2 full requirements contract with El Paso.

8  
9 **Q. Has Southwest made any proposals regarding the treatment of rates paid by Black**  
10 **Mountain's Cave Creek Division customers as a result of the acquisition?**

11 **A.** Yes. In Southwest's application for approval of the acquisition, Southwest proposes to  
12 retain the current margin rates for Cave Creek Division customers until the next Southwest  
13 general rate proceeding, at which time Southwest anticipates that former Black Mountain  
14 customers would begin paying the same rates as other Southwest customers. With the  
15 exception of the existing Cave Creek Division margin rates, Southwest has further  
16 proposed to apply all of its charges, terms, and conditions of service to Cave Creek  
17 Division customers after the acquisition is completed.

18  
19 **Q. Does Staff agree with Southwest's recommendation that the current Black Mountain**  
20 **margins for the Cave Creek Division be retained until Southwest's next rate**  
21 **proceeding?**

22 **A.** No. Currently Southwest generally has smaller margins in its current tariffed rates than  
23 Black Mountain does. For example, a comparison of the existing residential tariffs shows  
24 that Black Mountain's margin of \$0.62357 per therm is substantially higher than  
25 Southwest's margin, which is \$0.48762 for the first block (20 therms in the summer and  
26 40 therms in the winter) and \$0.40344 per therm for the second block. Similarly a

1 comparison of existing general commercial tariff rates shows that Black Mountain's  
2 margin of \$0.62357 per therm is substantially higher than Southwest's margins of  
3 \$0.38024 per therm for small commercial customers and \$0.27211 per therm for medium  
4 commercial customers.

5  
6 Continued application of the higher Black Mountain margins to Cave Creek Division  
7 customers after Black Mountain is dissolved into Southwest would inequitably burden the  
8 former Cave Creek Division customers with higher rates than any other similarly situated  
9 Southwest customers in Arizona are paying, for an indeterminate period of time, possibly  
10 until new rates from a future Southwest rate proceeding would go into effect. Under  
11 Southwest's proposal, Cave Creek customers would be unlikely to see any substantial rate  
12 benefit from the acquisition before a future Southwest rate proceeding.

13  
14 Further, having a block of almost 8,000 customers in the Cave Creek area paying  
15 substantially higher rates than nearby and otherwise identical Southwest customers for a  
16 significant period of time is likely to lead to customer complaints of inequitable treatment.

17  
18 **Q. What is Staff's recommendation regarding the margin rates Cave Creek customers**  
19 **would be charged as a result of the acquisition?**

20 A. BMG shall dissolve as a corporate entity on or before July 1, 2004. At the  
21 completion of the dissolution, BMG shall file a notice within this docket attesting to the  
22 specific date that the BMG dissolution was completed (herein referred to as the "noticed  
23 date"). Upon the noticed date of dissolution, the transfer of BMG's CC&N to SWG shall  
24 be deemed effective. As well, SWG's authorized natural gas rates and charges in their  
25 entirety shall be deemed the authorized rates and charges for Cave Creek Division  
26 customers' effective the noticed date of BMG's dissolution. If BMG fails to complete

1 dissolution by July 1, 2004, as discussed in above. BMG shall file a sufficient rate  
2 application with the Arizona Corporation Commission ("Commission" or "ACC") on or  
3 before July 1, 2004. Please note, this condition shall not limit Staff's ability to initiate a  
4 rate case at anytime. Furthermore, in no case shall the currently authorized BMG rates  
5 and charges remain in effect beyond July 1, 2004, without BMG initiating a sufficient rate  
6 application with the Commission.

7  
8 This course of action would result in the Cave Creek customers, once they become  
9 Southwest customers, being charged the same rates as all other similarly situated  
10 Southwest customers, thereby avoiding any on-going rate disparity. This would also  
11 provide Cave Creek customers with the tangible benefit of lower rates from the  
12 acquisition.

13  
14 Further, Southwest has proposed to change all other rates and rate components apart from  
15 the Cave Creek margin rates. It is more straightforward and simple to convert all the rates  
16 and rate components at once, rather than changing some rate components now and leaving  
17 the margin rates until later. Piecemeal conversion of rates could result in customer  
18 confusion.

19  
20 **Q. Could Southwest or BMG avoid such rate disparities and the possible problems such**  
21 **rate disparities might cause?**

22 **A.** Yes. Southwest or BMG could voluntarily agree to either implement the existing  
23 Southwest rates for the current Black Mountain Cave Creek Division customers at the  
24 time the stock transfer is completed, or to file shortly thereafter to implement Southwest's  
25 rates for these customers. This would result in an immediate and substantive reduction in  
26 rates for most Cave Creek Division customers and would avoid possible confusion during

1 the interim period between when the Commission would approve the acquisition and  
2 when Southwest's rates would be applied to the current Black Mountain Cave Creek  
3 Division customers.

4  
5 **Q. Please compare and contrast the impact on each existing Cave Creek Division rate**  
6 **class of retaining the existing Cave Creek Division rates or adopting Southwest's**  
7 **rates.**

8 **A.** The following questions and answers address the rate differences for each class of the  
9 existing Cave Creek Division rates and Southwest rates. For comparison purposes, the  
10 rates used are those reflected in Southwest's response to the Residential Utility Consumer  
11 Office ("RUCO") Data Request BLKMTN-1-13, which is attached to this testimony as  
12 Exhibit RG-2. Given that the monthly PGA rate for both Southwest and the Cave Creek  
13 Division has not changed since early 2002, the rates reflected in the above referenced data  
14 request are reflective of the rates paid by Southwest and Cave Creek Division customers  
15 through much of 2002. The only adjustment Staff has made to the numbers provided by  
16 Southwest in this data request is that Staff has used Southwest's cost of gas values for  
17 both sets of rates, to provide a consistent basis for comparison. Exhibit RG-3 contains a  
18 summary comparison of customer bills under the two sets of rates. Staff's review of the  
19 bill impacts on Cave Creek customers utilizes the bill count information for the 1999 test  
20 year used in the Cave Creek Division's most recent rate proceeding. There does not  
21 appear to be any reason why the usage characteristics reflected in the 1999 test year would  
22 be substantively different than current usage characteristics.

23  
24 **Q. How would Cave Creek Division residential customers be impacted by a switch to**  
25 **Southwest's residential tariff(s)?**

1 A. Southwest's residential rates reflect substantially lower margin rates, with Black  
2 Mountain's margin of \$0.62357 per therm eclipsing Southwest's margin, which is  
3 \$0.48762 for the first block (20 therms in the summer and 40 therms in the winter) and  
4 \$0.40344 per therm for the second block. However, Southwest has a higher customer  
5 charge of \$8.00, compared to Black Mountain's \$6.00 customer charge.

6  
7 Based upon an average monthly usage level of 59 therms, the average Cave Creek  
8 residential customer would see a reduction in his/her average bill from \$72.73 under the  
9 BMG Cave Creek Division rates to \$63.43 under Southwest's rates. The vast majority of  
10 this reduction would be concentrated in the heating season months, both due to high usage  
11 levels in those months and the greater impact that Southwest's lower second block in the  
12 rate structure will have during winter months. A comparison of monthly bills at various  
13 usage levels indicates that Cave Creek customers would see a lower monthly bill in  
14 months when they use 15 or more therms.

15  
16 **Q. How would Cave Creek Division commercial customers be impacted by a switch to**  
17 **Southwest's commercial tariff(s)?**

18 A. Southwest's commercial rates reflect substantially lower margin rates for both small and  
19 medium commercial customers. Under Southwest's tariff, a small commercial customer  
20 uses up to 600 therms per month, a medium commercial customers uses more than 600 but  
21 less than 15,000 therms per month, and a large commercial customer uses more than  
22 15,000 therms per month. The BMG Cave Creek Division rates schedules do not divide  
23 commercial customers into different classes based upon usage levels. It does not appear  
24 that any of Black Mountain's commercial tariff customers would switch to Southwest's  
25 large commercial tariff rates. Southwest's margins of \$0.38024 per therm for small  
26 commercial customers and \$0.27211 per therm for large commercial customers are much

1 lower than Black Mountain's commercial tariff's margin rate of \$0.62357 per therm.  
2 However, Southwest's customer charges of \$20.00 for small commercial customers and  
3 \$90.00 for medium commercial customers are higher than Black Mountain's \$15.00  
4 customer charge. The effect that was seen with residential customers happens again with  
5 commercial customers, with all but very low usage commercial customers benefiting from  
6 a switch to Southwest's rates.

7  
8 Based upon an average monthly usage level of 437 therms, the average Cave Creek  
9 commercial customer would see a reduction in his/her average bill from \$505.06 under the  
10 BMG Cave Creek Division rates to \$403.73 under Southwest's small commercial rates. A  
11 comparison of monthly bills at various usage levels indicates that Cave Creek customers  
12 would see a lower monthly bill in months when they use 21 or more therms.

13 A medium commercial customer using 2,000 therms a month would see a reduction in  
14 his/her bill from \$2,257.86 under the BMG Cave Creek Division rates to \$1,629.94 under  
15 Southwest's rates. A comparison of monthly bills at various usage levels indicates that  
16 Cave Creek customers who would qualify as medium commercial customers would see a  
17 lower monthly bill in months when they use 214 or more therms.

18  
19 **Q. What other customers does the Cave Creek Division have, other than those served**  
20 **through the residential and commercial tariffs?**

21 **A.** The vast majority of the Cave Creek Division's customers are served under the residential  
22 and commercial tariffs. A very small number of customers are served under the Cave  
23 Creek Division's Resort, Gas Air Conditioning, Cogeneration, and Compressed Natural  
24 Gas (CNG) tariffs. According to the 1999 test year bill counts, there were less than 20  
25 customers served on these tariffs, with most of these customers on the Resort tariff. It  
26 should be recognized that the CNG tariff was not in effect during 1999.

1  
2 Q. How would Cave Creek Division customers served under the Resort, Gas Air  
3 Conditioning, Cogeneration, and CNG tariffs be impacted by a switch to Southwest's  
4 comparable tariff(s)?

5 A. For Resort tariff customers, Southwest's margin rates are significantly lower, whether the  
6 customers switch to small commercial service or medium commercial service. The BMG  
7 Resort tariff customer charge of \$30.00 is higher than Southwest's small commercial  
8 customer charge of \$20.00, but less than Southwest's medium commercial customer  
9 charge of \$90.00. Therefore, customers switching to the small commercial tariff would  
10 see savings regardless of usage levels, while customers switching to the medium  
11 commercial tariff would see savings if their monthly usage is 171 therms or greater. A  
12 small commercial customer using 300 therms would see a reduction from \$366.43 to  
13 \$283.43. A medium commercial customer using the 1999 monthly average usage of 991  
14 therms would see a reduction from \$1,141.34 to \$853.04.

15  
16 For gas air conditioning tariff customers, a customer would see an increase of the  
17 customer service charge from \$6.00 to \$20.00 and a slight reduction in the per therm rate,  
18 assuming the customer switches to Southwest's commercial air conditioning tariff,  
19 Schedule G-40. A comparison of bills under the two rate structures indicates that  
20 customers would see very little difference in his/her monthly bills due to a switch from  
21 BMG Cave Creek rates to Southwest rates. This is understandable, given that when the  
22 BMG Cave Creek CNG tariff was implemented, it was based at least to some extent on  
23 Southwest's CNG tariff. A customer using 1,000 therms per month would see a miniscule  
24 increase in his/her bill from \$593.86 to \$593.99 by switching to Southwest's rate.  
25

1 For customers served under the Cave Creek Division's cogeneration tariff, customers  
2 would see an increase in their customer service charge from \$30.00 to \$90.00 and a  
3 decrease in their per therm rate from \$0.55786 per therm to \$0.53713 per therm under  
4 Southwest's Schedule G-60. Again, the bill comparisons indicate that cogeneration  
5 customers would see very little change in their bills as a result of switching from BMG  
6 Cave Creek Division rates to Southwest rates. For example, a cogeneration customer  
7 consuming the 1999 average usage level of 4,174 therms per month would see his/her  
8 monthly bill reduced from \$2,358.51 to \$2,331.98. It should be noted that for  
9 cogeneration customers, the long term impacts of the switch to Southwest rates is less  
10 clear due to the manner in which Southwest calculates the gas cost portion of its G-60 rate.  
11 The gas cost rate for this class (and Southwest's G-80 class) is reset every six months,  
12 based upon fixed price purchases Southwest makes for these specific customer classes.  
13 Therefore, if there is a significant shift in the gas cost for Schedule G-60, that would  
14 impact the currently small differential between Black Mountain and Southwest rates for  
15 cogeneration customers.

16  
17 For customers served under the BMG Cave Creek Division CNG tariff, there would be an  
18 increase in the customer charge from \$6.00 to \$8.00 and an increase in the per therm rate  
19 from \$0.55786 to \$0.5872 per therm. Such customers would see a small increase in rates  
20 regardless of usage levels. As previously noted, this tariff was introduced after the rate  
21 case where the 1999 test year was utilized, so there is not any bill count information  
22 available for this class of customers from the 1999 test year. However, in Black  
23 Mountain's filing for approval of the tariff, it assumed there would be a typical usage of  
24 52 therms per month, so Staff has used this typical usage to show an example of the rate  
25 change impact in this case. A CNG customer using 52 therms would see an increase in  
26 his/her monthly bill from \$35.01 to \$38.53.



1  
2 **Q. Please summarize your findings regarding the rate impacts on Cave Creek Division**  
3 **customers of switching to Southwest's tariffed rates.**

4 A. Most BMG Cave Creek Division customers would see a significant rate decrease if they  
5 were switched to the applicable Southwest tariffs as a result of the proposed acquisition.  
6 For the residential and commercial tariffs, which represent upwards of 99 percent of Cave  
7 Creek Division customers according to the 1999 bill count information, only some very  
8 low usage residential and commercial tariff customers would experience slightly higher  
9 monthly bills, which would primarily be summer residential bills. Such customers would  
10 in all likelihood more than make up for their slightly higher summer bills with significant  
11 bill savings during the winter heating season.  
12

13 **PURCHASED GAS ADJUSTOR**

14 **Q. Has Southwest made any recommendations regarding the Cave Creek Division's**  
15 **purchased gas adjustor?**

16 A. Yes. In Southwest's application, the company states that it intends to merge the PGA  
17 bank balances of Southwest and the Cave Creek Division and apply Southwest's cost of  
18 gas to Cave Creek Division customers after the approval of the acquisition. Further,  
19 Southwest has indicated that it would apply a 12 month PGA surcharge or credit to Cave  
20 Creek Division customers to account for any over or under-collection in the Cave Creek  
21 PGA bank balance at the time of the approval of the acquisition. During the 12 month  
22 period when the PGA surcharge or credit is in place, Cave Creek Division customers  
23 would not be subject to any PGA surcharge or credit in place for other Southwest  
24 customers.  
25

26 **Q. Does Staff have any recommendations regarding the PGA mechanism?**

1 A. Yes. I recommend that the Cave Creek PGA mechanism, cost of gas reflected in the tariff,  
2 and PGA bank balance be merged with their counterparts at Southwest on the BMG  
3 dissolution completion date stated in a Notice to be filed in this docket. This would  
4 coincide with Staff's recommended implementation of Southwest's rates in the Cave  
5 Creek Division. In the interim period, to the extent Southwest begins purchasing gas for  
6 Black Mountain, Southwest could allocate a pro rata share of its Arizona purchases to  
7 Black Mountain to meet Black Mountain's needs. To the extent such an implementation  
8 plan raises operational or technical issues for Southwest, Staff is ready and willing to work  
9 with the company to address those issues. Regarding the structure and function of the  
10 PGA mechanism, there should be no changes to the PGA mechanism in this proceeding  
11 for either Southwest or Black Mountain from the PGA mechanism that was implemented  
12 by Commission Decision No. 61225 (October 30, 1998) and subsequent decisions.

13  
14 **Q. Does Staff have any recommendations regarding the Cave Creek Division's PGA**  
15 **bank balance?**

16 A. No. Currently both the BMG Cave Creek Division and Southwest Gas have sizable  
17 overcollected PGA bank balances. However it cannot be assumed that at the time the  
18 Commission acts on the acquisition that these sizable overcollections will exist for one or  
19 both companies. It is likely that between now and any approval of the acquisition that  
20 Arizona will have experienced some or all of the 2002-2003 heating season. Natural gas  
21 prices are very volatile and it is possible that factors such as a cold winter, higher demand,  
22 or declining production rates could lead to some form of price spike during the heating  
23 season that could impact the overcollected PGA bank balances. Staff does not  
24 recommend any specific action regarding the PGA bank balances at this time. Staff and  
25 Southwest typically have on-going discussions regarding PGA matters such as the PGA  
26 bank balance. If some form of action is required in relation to the PGA bank balances at

1 the time of Black Mountain's stated dissolution, such action could be initiated by Staff or  
2 Southwest. As with the conversion of rates from the BMG Cave Creek Division's to  
3 Southwest's, Staff is willing to work with the company to address any operational or  
4 technical details which may arise.

5  
6 **OTHER RATES/SERVICES**

7 **Q. Does Staff recommend that Southwest's miscellaneous service charges be adopted for**  
8 **the Cave Creek Division customers at the time Black Mountain is stated to be**  
9 **completely dissolved?**

10 **A. Yes.** Exhibit RG-4 shows a comparison of the miscellaneous service charges for  
11 Southwest and Black Mountain's two divisions. Southwest's miscellaneous service  
12 charges are generally less than the existing charges in the Cave Creek Division and  
13 therefore it is expected that Cave Creek Division customers would benefit from adoption  
14 of Southwest's miscellaneous service charges.

15  
16 **GAS SUPPLY PROCUREMENT**

17 **Q. Does Staff believe that the proposed acquisition of Black Mountain will have a**  
18 **discernable impact on Southwest's gas procurement activities?**

19 **A. No.** Given the relative size of Southwest and Black Mountain, the addition of Black  
20 Mountain's natural gas needs will represent a very small increment of additional gas  
21 demand for Southwest to acquire.

22  
23 **Q. Please discuss the impact Southwest's acquisition of Black Mountain could have on**  
24 **the procurement of natural gas supplies for the Cave Creek Division's customers.**

25 **A. The high level of uncertainty in a number of dockets at the Federal Energy Regulatory**  
26 **Commission ("FERC") regarding pipeline capacity rights on the El Paso pipeline system**

1 complicates efforts to compare and contrast gas supply procurement with or without  
2 Southwest's acquisition of Black Mountain. However, even in such uncertain times, it is  
3 possible to consider possible advantages or disadvantages of different gas supply  
4 procurement scenarios. The two major aspects of gas supply procurement are the  
5 purchasing of the natural gas commodity and the acquisition of pipeline capacity rights on  
6 the interstate pipeline system to deliver the natural gas commodity to the local distribution  
7 company's ("LDC") service area. As with the entire Phoenix metropolitan area, the Cave  
8 Creek Division is entirely dependent on the El Paso pipeline system to meet its gas supply  
9 needs.

10  
11 On the El Paso pipeline, both Southwest and Black Mountain are currently full  
12 requirements shippers. However, Southwest is considered an FT-1 shipper (a large full  
13 requirements shipper), while Black Mountain is considered an FT-2 shipper (a small full  
14 requirements shipper). Historically, the contracts rights of FT-1 and FT-2 shippers have  
15 been similar. However, under proposals currently being considered at the FERC, FT-1  
16 shippers, including Southwest, would be forcibly converted to contract demand ("CD")  
17 contracts, which will greatly reduce the operational flexibility of such shippers as they try  
18 to access preferable gas supplies. Due to their insignificant size on the El Paso system, it  
19 appears highly likely that any new capacity allocation proposal adopted by the FERC  
20 would allow FT-2 shippers to retain their full requirements rights. Under such full  
21 requirements rights, Black Mountain could source all of its gas supplies out of the supply  
22 basin of its choice, while Southwest's likely CD rights would be more restricted in how  
23 much gas can be sourced from each supply basin. The pipeline capacity allocation issues  
24 currently before FERC have implications for Cave Creek Division customers whether  
25 Southwest acquires Black Mountain or not.  
26

1 Q. Please discuss the possible advantages or disadvantages of Southwest's acquisition of  
2 Black Mountain on the procurement of gas supplies to serve Cave Creek Division  
3 customers.

4 A. While Southwest is a much larger southwestern LDC than Black Mountain, Black  
5 Mountain's parent company, Xcel Energy, also has large LDC operations. Therefore,  
6 whether Black Mountain is acquired or not, the Cave Creek Division customers are likely  
7 to be served by an organization with a significant amount of gas procurement expertise.  
8 However, it is possible, given Southwest's focus on southwestern natural gas markets, that  
9 such a regional focus could lead to some benefits in the procurement of gas supplies.

10  
11 Regarding the on-going FERC matters, Cave Creek Division customers are likely to be  
12 more directly impacted in the short term if they are part of Southwest than if they remain  
13 with Black Mountain. As noted before, Black Mountain purchases some of its' gas  
14 supplies through its FT-2 contract with El Paso and some of its supplies from Southwest  
15 through Schedule G-95. If the acquisition is approved, it is likely that Black Mountain's  
16 FT-2 contract rights would be converted into CD rights and be combined with what are  
17 likely to be Southwest's new CD rights on El Paso. The main implication of this would  
18 likely be that rather than being able to source all of its gas supplies for the Cave Creek  
19 Division customers from the most inexpensive supply basin under Black Mountain's FT-2  
20 contract, some portion of the gas to serve these customers would likely have to be sourced  
21 from higher priced basins.

22  
23 Regarding the portion of Black Mountain's gas supplies that are purchased through  
24 Southwest's Schedule G-95, these gas costs would be impacted by any increase in costs  
25 which Southwest would experience as a result of the on-going proceedings at FERC.  
26

1 In summary, although benefits are possible, it is not clear that there will be any substantive  
2 gas supply procurement benefit to Cave Creek Division customers as a result of the  
3 proposed acquisition and it is possible that the cost of gas to serve Cave Creek Division  
4 customers could actually increase as a result of the acquisition. This is in large measure  
5 due to the uncertainty of Southwest's future contract rights and related costs at stake in the  
6 current FERC proceedings.

7  
8 **PAGE DIVISION**

9 **IMPACT OF ACQUISITION ON CUSTOMER RATES, PURCHASED GAS ADJUSTOR,**  
10 **AND OTHER RATES/SERVICES**

11 **Q. Please describe Black Mountain's Page Division.**

12 **A.** The Page Division is located in Page, Arizona and is served with propane. As of the  
13 monthly PGA report filed at the end of October, 2002, the Page Division serves 1,106  
14 residential customers and 197 commercial customers, with sales of 1,134,340 therms from  
15 October 2001 through September 2002. The Page Division is a stand-alone propane  
16 distribution system and receives its propane supplies by truck delivery from out-of-state  
17 propane suppliers.

18  
19 **Q. Has Southwest made any proposals regarding the treatment of rates paid by Black**  
20 **Mountain customers as a result of the acquisition?**

21 **A.** For the Page Division, Southwest anticipates that the existing rates would be unaffected  
22 by the acquisition and Southwest further anticipates sale of the Page Division within 12  
23 months of completion of its acquisition of Black Mountain. Southwest has not proposed  
24 any changes to the Page Division's PGA mechanism or PGA bank balance.  
25

1 Q. Should the Page Division receive treatment similar to that which Staff has  
2 recommended for the Cave Creek Division?

3 A. The Page Division's geographical isolation, the uniqueness of its propane operations in  
4 comparison to Southwest's other Arizona operations and Black Mountain's Cave Creek  
5 Division operations, and the fact that Southwest has indicated that it intends to sell the  
6 Page Division within 12 months of its acquisition of Black Mountain, are compelling  
7 reasons why the Page Division may warrant different treatment than that which Staff  
8 recommends for the Cave Creek Division. However, if the Page Division is not sold on a  
9 timely basis, as contemplated in Southwest's application, steps should be taken to ensure  
10 that Page Division customers receive possible benefits from the purchase of Black  
11 Mountain by Southwest.

12  
13 Q. Does Staff have any recommendations regarding the Page Division?

14 A. Yes. First, if SWG fails to sell BMG's Page Propane Division at or prior to the noticed  
15 date of BMG's dissolution, SWG shall take all appropriate and timely steps to ensure rates  
16 and charges are in place for the current BMG propane customers, such as: SWG filing a  
17 request to charge BMG's existing rates, or SWG filing a report amending SWG's filing in  
18 this case clarifying that BMG as a corporate entity would remain intact for the sole  
19 purpose of providing the same propane service as BMG's Page Division currently  
20 provides in its propane operations.

21  
22 Second, if SWG fails to file for Commission approval of the sale of BMG's Page Division  
23 within 18 months of the Commission's approval of SWG's acquisition of BMG, the Page  
24 Division should within 19 months of a decision in this case make a filing for Commission  
25 approval to begin offering the Page Division propane customers service options that are  
26 currently available to SWG's customers. Such services include, but are not limited to, a

1 low income discount tariff for residential customers, a balanced payment plan option, an  
2 online bill payment option, and applicable demand-side management programs.  
3

4 **SUMMARY**

5 **Q. Please summarize your recommendations.**

6 A. Staff's recommendations are as follows for the Cave Creek Division:

7 1. BMG shall dissolve as a corporate entity on or before July 1, 2004. At the  
8 completion of the dissolution, BMG shall file a notice within this docket attesting to the  
9 specific date that the BMG dissolution was completed (herein referred to as the "noticed  
10 date"). Upon the noticed date of dissolution, the transfer of BMG's CC&N to SWG shall  
11 be deemed effective. As well, SWG's authorized natural gas rates and charges in their  
12 entirety shall be deemed the authorized rates and charges for Cave Creek Division  
13 customers' effective the noticed date of BMG's dissolution. If BMG fails to complete  
14 dissolution by July 1, 2004, as discussed in above, BMG shall file a sufficient rate  
15 application with the Arizona Corporation Commission ("Commission" or "ACC") on or  
16 before July 1, 2004. Please note, this condition shall not limit Staff's ability to initiate a  
17 rate case at anytime. Furthermore, in no case shall the currently authorized BMG rates  
18 and charges remain in effect beyond July 1, 2004, without BMG initiating a sufficient rate  
19 application with the Commission.  
20

21 2. The Cave Creek Division PGA mechanism shall be merged with Southwest's PGA  
22 mechanism on date of Black Mountain's completed dissolution.  
23

24 Staff's recommendations are as follows for the Page Division:

25 1. If SWG fails to sell BMG's Page Propane Division at or prior to the noticed date of  
26 BMG's dissolution, SWG shall take all appropriate and timely steps to ensure rates and



1 charges are in place for the current BMG propane customers, such as: SWG filing a  
2 request to charge BMG's existing rates, or SWG filing a report amending SWG's filing in  
3 this case clarifying that BMG as a corporate entity would remain intact for the sole  
4 purpose of providing the same propane service as BMG's Page Division currently  
5 provides in its propane operations.

- 6
- 7 2. If SWG fails to file for Commission approval of the sale of BMG's Page Division within  
8 18 months of the Commission's approval of SWG's acquisition of BMG, the Page  
9 Division should within 19 months of a decision in this case make a filing for Commission  
10 approval to begin offering the Page Division propane customers service options that are  
11 currently available to SWG's customers. Such services include, but are not limited to, a  
12 low income discount tariff for residential customers, a balanced payment plan option, an  
13 online bill payment option, and applicable demand-side management programs.

14

15 Q. Does this conclude your testimony?

16 A. Yes, it does.

## RESUME

ROBERT G. GRAY

### Education

- B.A. Geography, University of Minnesota-Duluth (1988)  
M.A. Geography, Arizona State University (1990) Thesis: *A Model for Optimizing the Federal Express Overnight Delivery Aircraft Network.*

### Employment History

Arizona Corporation Commission, Utilities Division, Phoenix, Arizona: Senior Economist (August 1997 - present), Economist II (June 1991 - July 1997), Economist I (June 1990 - June 1991). Conduct economic and policy analyses of issues related to the natural gas, electric, and telecommunications utilities. Prepare recommendations and present written and oral testimony before the Commission on various utility industry issues. Use statistical techniques such as regression analysis and factor analysis in a variety of studies to forecast and explain causes and effects. Represent the ACC in natural gas proceedings at the Federal Energy Regulatory Commission. Conduct working group/workshop activities including organizing meetings, moderating meetings, and analyzing and reporting working group findings.

### Testimony

- Resource Planning for Electric Utilities, (Docket No. 0000-90-088), Arizona Corporation Commission, 1990.
- Citizens Utilities Company, Electric Rate Case (Docket No. E-1032-92-073), Arizona Corporation Commission, 1993.
- Resource Planning for Electric Utilities, (Docket No. 0000-93-052), Arizona Corporation Commission, 1993.
- Arizona Public Service Company, Rate Settlement (Docket No. E-1345-94-120), Arizona Corporation Commission, 1994.
- U S West Communications, Rate Case (Docket No. E-1051-93-183), Arizona Corporation Commission, 1995.

(with Mike Kuby) "The Hub and Network Design Problem With Stopovers and Feeders: The Case of Federal Express," Transportation Research A, Vol. 27A, 1993, pp. 1-12.

(with David Berry) Staff Guidelines on Photovoltaics Versus Line Extensions. Arizona Corporation Commission, January 28, 1993.

(with Ray Williamson, Robert Hammond, Frank Mancini, and James Arwood) The Solar Electric Option (Instead of Power Line Extension). A joint publication of the Arizona Corporation Commission and the Arizona Department of Commerce Energy Office, August, 1993.

(with David Berry, Kim Clark, Barbara Keene, Jesse Tsao, Ray Williamson, Randall Sable, Roni Washington, Wilfred Shand, and Prem Bahl) Staff Report on Resource Planning. (Docket No. U-0000-93-052) Arizona Corporation Commission, 1993.

Staff Report On Rural Local Calling Areas. (Docket No. E-1051-93-183) Arizona Corporation Commission, March, 1994.

(with David Berry, Kim Clark, Barbara Keene, Glenn Shippee, Julia Tsao, and Ray Williamson) Staff Report on Resource Planning. (Docket No. U-000-95-506) Arizona Corporation Commission, 1996.

(with Barbara Keene) "Customer Selection Issues," NRRI Quarterly Bulletin, Vol. 19, No. 1, Spring 1998, National Regulatory Research Institute.

Staff Report on Purchased Gas Adjustor Mechanisms, (Docket No. G-00000C-98-0568) Arizona Corporation Commission, October 19, 1998.

Staff Report on the Rolling Average PGA Mechanism, (Docket No. G-00000C-98-0568), Arizona Corporation Commission, September 6, 2000.

#### Additional Training

1990	Seminars on Regulatory Economics
1993	PURTI course on Public Utilities and the Environment
1996	Center for Public Utilities Workshop on Gas Unbundling and Retail Competition
1997	NARUC 6 <sup>th</sup> Annual Natural Gas Conference
1998	Local Distribution Company Restructuring and Retail Access and Competition Conference
1998	NARUC 7 <sup>th</sup> Annual Natural Gas Conference
1999 – 2002	NARUC Summer Committee Meetings
2001	Center for Public Utilities Workshop on Risk Management in Gas Purchasing

Exhibit RG-1

Page 2

### **Memberships**

NARUC - Staff Subcommittee on Gas – Vice-Chair (2002- )

Schedule RGG-2

SOUTHWEST GAS CORPORATION  
ACQUISITION OF BLACK MOUNTAIN GAS COMPANY

\*\*\*

RESIDENTIAL UTILITY CONSUMER OFFICE  
DATA REQUEST RUCO-BLKMTN NO. 1  
(RUCO-BLKMTN-1-1 THROUGH RUCO-BLKMTN-1-18)

DOCKET NO.: G-01551A-02-0425  
COMMISSION: ARIZONA CORPORATION COMMISSION  
DATE OF REQUEST: AUGUST 6, 2002

Request No. RUCO-BLKMTN-1-13:

Rate Relief - Please provide the following information regarding rate relief:

- a. Does Southwest anticipate a need to file for rate relief within 36 months of the Commission's approval of the sale and transfer?
- b. Explain the basis for the conclusion to "part a" and provide documentation to support this conclusion.
- c. Does Southwest intend to eventually consolidate Black Mountain's rates with its other Arizona gas rates?
- d. Provide a comparison, by customer class, of Southwest's existing rates with Black Mountain's existing rates.

Respondent: Pricing

Response:

- a. Southwest monitors and evaluates the results of its operations to determine if and when it needs to file for rate relief. The timing of this filing is independent of the BMG acquisition.
- b. See response to part a.
- c. Yes.
- e. See attached.

Description	Base Tariff Rate		Rate Adjustment	Monthly Gas Cost Adjustment	Effective Tariff Rate	
	Margin	Gas Cost				
SWG						
G-5 - Residential Gas Service						
Basic Service Charge	\$	8.00			\$ 8.00	
Commodity Charge per Therm						
Summer (May - October):						
First 20 Therms	\$	0.48762	\$ 0.37034	\$ 0.00967	\$ 0.12752	\$ 0.99515
Over 20 Therms	\$	0.40344	\$ 0.37034	\$ 0.00967	\$ 0.12752	\$ 0.91097
Winter (November - April):						
First 40 Therms	\$	0.48762	\$ 0.37034	\$ 0.00967	\$ 0.12752	\$ 0.99515
Over 40 Therms	\$	0.40344	\$ 0.37034	\$ 0.00967	\$ 0.12752	\$ 0.91097
G-25 General Gas Service						
Basic Service Charge						
Small	\$	20.00			\$ 20.00	
Medium	\$	90.00			\$ 90.00	
Commodity Charge Per Therm						
Small - All Usage	\$	0.38024	\$ 0.37034	\$ 0.00967	\$ 0.12752	\$ 0.88777
Medium - All Usage	\$	0.27211	\$ 0.37034	\$ 0.00967	\$ 0.12752	\$ 0.77964
BMG						
GS-1 Gas Service						
Residential	\$	6.00			\$ 6.00	
Commercial	\$	15.00			\$ 15.00	
Resort	\$	30.00			\$ 30.00	
Commodity Charge Per Therm - All Usage	\$	0.62357	\$ 0.42000	\$ -	\$ 0.06450	\$ 1.10807
SWG						
G-40 Air Conditioning Gas Service						
Basic Service Charge	Customers otherwise applicable rate.					
Commodity Charge Per Therm - All Usage	\$	0.07613	\$ 0.37034	\$ -	\$ 0.12752	\$ 0.57399
BMG						
GA-1 Gas Air Conditioning Service						
Basic Service Charge	\$	6.00			\$ 6.00	
Commodity Charge Per Therm - All Usage	\$	0.09000	\$ 0.42000	\$ -	\$ 0.06450	\$ 0.57450
SWG						
G-60 Cogeneration Gas Service						
Basic Service Charge	Customers otherwise applicable rate.					
Commodity Charge Per Therm - All Usage	\$	0.08934	\$ 0.44779	\$ -	\$ -	\$ 0.53713
BMG						
CG-1 Cogeneration/Chiller service						
Basic Service Charge	\$	30.00			\$ 30.00	
Commodity Charge Per Therm - All Usage	\$	0.06000	\$ 0.42000	\$ -	\$ 0.06450	\$ 0.54450
SWG						
G-55 Gas Service for Compression						
Basic Service Charge						
Small	\$	20.00			\$ 20.00	
Large	\$	170.00			\$ 170.00	
Residential	\$	8.00			\$ 8.00	
Commodity Charge Per Therm - All Usage	\$	0.13305	\$ 0.37034	\$ -	\$ 0.12752	\$ 0.63091
BMG						
CNG-1 Compressed Natural Gas						
Basic Service Charge	\$	6.00			\$ 6.00	
Commodity Charge Per Therm - All Usage	\$	0.13000	\$ 0.42000	\$ -	\$ 0.06450	\$ 0.61450

## Comparison of Black Mountain Gas Co. and City of Asheville

## Residential Service Tariff

	BMG - Cave Creek Southwest Gas		BMG Cost Components				SW Gas Cost Components		
	Schedule R-1	Schedule G-5	Margin	Gas Cost	Margin	Base Cost of Gas	Monthly Rate	PGA Rate Adjustment	
Basic Service Charge	\$6.00	\$8.00							
summer 1st 20 therms - per therm	\$1.13110	\$0.99515	\$0.62357	\$0.50753	\$0.48762	\$0.37034	\$0.12752	\$0.00967	
summer after 1st 20 therms - per therm	\$1.13110	\$0.91097	\$0.62357	\$0.50753	\$0.40344	\$0.37034	\$0.12752	\$0.00967	
winter 1st 40 therms - per therm	\$1.13110	\$0.99515	\$0.62357	\$0.50753	\$0.48762	\$0.37034	\$0.12752	\$0.00967	
winter after 1st 40 therms - per therm	\$1.13110	\$0.91097	\$0.62357	\$0.50753	\$0.40344	\$0.37034	\$0.12752	\$0.00967	
Bill Comparisons									
Summer - 10 therms	\$17.31	\$17.95							
Summer - 15 therms	\$22.97	\$22.93							
Summer - 30 therms	\$39.93	\$37.01							
Summer - 50 therms	\$62.56	\$55.23							
Summer - 59 therms	\$72.73	\$63.43							
Winter - 15 therms	\$22.97	\$22.93							
Winter - 30 therms	\$39.93	\$37.85							
Winter - 59 therms	\$72.73	\$65.11							
Winter - 75 therms	\$90.83	\$79.69							
Winter - 100 therms	\$119.11	\$102.46							
Winter - 150 therms	\$175.67	\$148.01							
1999 avg. monthly usage	59								



# Commercial Tariff

Basic Service Charge  
per therm rate

Bill Comparisons

20 therms  
30 therms  
100 therms  
200 therms  
300 therms  
400 therms  
437 therms  
500 therms  
600 therms

1999 avg. monthly usage

## Commercial Tariff

Basic Service Charge  
per therm rate

Bill Comparisons

213 therms  
437 therms  
700 therms  
1000 therms  
2000 therms  
3000 therms  
4000 therms  
5000 therms  
6000 therms

1999 avg. monthly usage

BMG - Cave Creek Southwest Gas  
Schedule C-1 G-25 (Small)

\$15.00  
\$1.12143 \$20.00  
\$0.87810

BMG Cost Components

SW Gas Cost Components

Margin Gas Cost Margin Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

\$0.62357 \$0.49786 \$0.38024 \$0.37034 \$0.12752 \$0.00000

BMG - Cave Creek Southwest Gas

\$37.43 \$37.56  
\$48.64 \$46.34  
\$127.14 \$107.81  
\$239.29 \$195.62  
\$351.43 \$283.43  
\$463.57 \$371.24  
\$505.06 \$403.73  
\$575.72 \$459.05  
\$687.86 \$546.86

437

BMG - Cave Creek Southwest Gas  
Schedule C-1 G-25 (Medium)

\$15.00 \$90.00  
\$1.12143 \$0.76997

BMG Cost Components

SW Gas Cost Components

Margin Gas Cost Margin Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

\$0.62357 \$0.49786 \$0.27211 \$0.37034 \$0.12752 \$0.00000

BMG - Cave Creek Southwest Gas

\$253.86 \$254.00  
\$505.06 \$426.48  
\$800.00 \$628.98  
\$1,136.43 \$859.97  
\$2,257.86 \$1,629.94  
\$3,379.29 \$2,399.91  
\$4,500.72 \$3,169.88  
\$5,622.15 \$3,939.85  
\$6,743.58 \$4,709.82

437

# Resort Tariff

Basic Service Charge  
per therm rate

Bill Comparisons

30 therms  
100 therms  
200 therms  
300 therms  
400 therms  
437 therms  
500 therms  
600 therms

1999 avg. monthly usage

# Resort Tariff

Basic Service Charge  
per therm rate

Bill Comparisons

100 therms  
171 therms  
300 therms  
600 therms  
991 therms  
1500 therms  
3000 therms  
6000 therms  
9000 therms

1999 avg. monthly usage

BMG - Cave Creek Southwest Gas  
Schedule CRS-1 G-25 (Small) ✓  
\$30.00 \$20.00  
\$1.12143 \$0.87810

BMG - Cave Creek Southwest Gas

\$63.64 \$46.34  
\$142.14 \$107.81  
\$254.29 \$195.62  
\$366.43 \$283.43  
\$478.57 \$371.24  
\$520.06 \$403.73  
\$590.72 \$459.05  
\$702.86 \$546.86

991

BMG Cost Components

SW Gas Cost Components

Margin Gas Cost Margin Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

\$0.62357 \$0.49786 \$0.38024 \$0.37034 \$0.12752 \$0.00000

BMG - Cave Creek Southwest Gas  
Schedule CRS-1 G-25 (Medium)  
\$30.00 \$90.00  
\$1.12143 \$0.76997

BMG - Cave Creek Southwest Gas

\$142.14 \$167.00  
\$221.76 \$221.66  
\$366.43 \$320.99  
\$702.86 \$551.98  
\$1,141.34 \$853.04  
\$1,712.15 \$1,244.96  
\$3,394.29 \$2,399.91  
\$6,758.58 \$4,709.82  
\$10,122.87 \$7,019.73

991

BMG Cost Components

SW Gas Cost Components

Margin Gas Cost Margin Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

\$0.62357 \$0.49786 \$0.27211 \$0.37034 \$0.12752 \$0.00000

# Gas Air Conditioning Service Tariff

Basic Service Charge  
per therm rate

## Bill Comparisons

200 therms  
400 therms  
523 therms  
750 therms  
1000 therms  
1009 therms  
1250 therms  
1500 therms

1999 avg. monthly usage

BMG - Cave Creek Southwest Gas  
Schedule GA-1 Schedule G-40

\$6.00 \$20.00  
\$0.58786 \$0.57399

BMG - Cave Creek Southwest Gas

\$123.57 \$134.80  
\$241.14 \$249.60  
\$313.45 \$320.20  
\$446.90 \$450.49  
\$593.86 \$593.99  
\$599.15 \$599.16  
\$740.83 \$737.49  
\$887.79 \$880.99

523

BMG Cost Components

SW Gas Cost Components

Margin

Gas Cost

Margin

Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

\$0.09000 \$0.49786 \$0.07613 \$0.37034 \$0.12752 \$0.00000

# Cogeneration Tariff

Basic Service Charge  
per therm rate

## Bill Comparisons

100 therms  
1000 therms  
2000 therms  
3000 therms  
4174 therms  
5000 therms  
7000 therms  
9000 therms

1999 avg. monthly usage

BMG - Cave Creek Southwest Gas  
Schedule CG-1 Schedule G-60

\$30.00 \$90.00  
\$0.55786 \$0.53713

BMG - Cave Creek Southwest Gas

\$85.79 \$143.71  
\$587.86 \$627.13  
\$1,145.72 \$1,164.26  
\$1,703.58 \$1,701.39  
\$2,358.51 \$2,331.98  
\$2,819.30 \$2,775.65  
\$3,935.02 \$3,849.91  
\$5,050.74 \$4,924.17

4174

BMG Cost Components

SW Gas Cost Components

Margin Gas Cost Margin Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

\$0.06000 \$0.49786 \$0.08934 \$0.44779 \$0.00000 \$0.00000

Note: For the cogeneration tariff comparison, Southwest's actual gas cost value was inserted for Southwest's rates.  
The gas cost for this tariff is set differently than the gas cost for most other Southwest tariffs.

# Compressed Natural Gas Tariffs

Basic Service Charge  
per therm rate

BMG - Cave Creek Southwest Gas  
Schedule CNG-1 Schedule G-55

\$6.00 \$8.00  
\$0.55786 \$0.58720

BMG Cost Components SW Gas Cost Components  
Margin Gas Cost Margin Base Cost Monthly Rate  
of Gas PGA Rate Adjustment

Bill Comparisons

BMG - Cave Creek Southwest Gas

25 therms \$19.95 \$22.68  
50 therms \$33.89 \$37.36  
52 therms \$35.01 \$38.53  
75 therms \$47.84 \$52.04  
100 therms \$61.79 \$66.72  
200 therms \$117.57 \$125.44  
500 therms \$284.93 \$301.60  
1000 therms \$563.86 \$595.20

\$0.06000 \$0.49786 \$0.08934 \$0.37034 \$0.12752 \$0.00000

Estimated Average Usage

52

Note: No usage information in 1999. CNG-1 Tariff approved 9-18-2000 (Decision Number 62890). Estimated usage is based upon Black Mountain's example of usage provided to Staff during the 2000 tariff approval proceeding.

Schedule RGG-4

Charges	SWG	BMG-Page	BMG-Cave Creek
Establishment	(G-10)\$24	\$20	\$20
Expedited Service	\$32	----	----
All Other Schedules	\$30	----	----
Expedited	\$40	----	----
Re-Establishment	-----	(1)	(1)
Re-Connection	-----	\$30	\$30
After-hours	-----	\$45	\$45
Service Calls Per Hour	-----	\$30	\$30
After Hours	-----	\$45	\$45
Meter Re-Read	\$10	\$25	\$25
Meter Test (per test)	\$25	----	----
" " (per hour)	----	\$25	\$25
Returned Check Charge	\$10	\$15	\$15
Late Charge	1.5% of Delinquent	1.5%	1.5%
Field Collection Fee	\$20	----	----
Security deposit Residential	----	(2)	(2)
Security deposit Com.	-----	(3)	(3)
Deferred Payment	-----	----	1/5%

(1) Number of months off-system times monthly minimum charge (ACC Rule R14-2-403 (B))

(2) Two (2) times the average monthly bill (ACC R14-2-403 (B))

(3) Two and one-half (2 ½) times the average monthly bill (ACC R14-2-403 (B))